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International Court of Justice

H1254 – 0002

Final Pleading

made before the

International Military Tribunal of Nuernberg

in the Trial

against

Hermann GOERING and others

by

Dr. Walter SIEMERS

Attorney-at-law in Hamburg

Defense Counsel for

the Defendant Dr. h.c. Erich RAEDER

Nuernberg, July 1946

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Gentlemen of the Tribunal,

In my final pleading for the defendant Grand-Admiral Dr. RAEDER, I should like to keep to the order I chose for my Document Book and for the whole presentation of evidence. I think a survey of the whole case will thus be easier.

RAEDER, who has just turned 70 years of age, has been, ever since the age of 18, that is to say for half a century or so, and in an eventful period, exclusively a soldier, body and soul. Although he has never known anything but his duties as a soldier, the Prosecution has accused him, in this major Trial against National-Socialism, not only as soldier, namely as commander-in-chief of the German Navy but – what is singular and decisive – as politician, as political conspirator and as Government member, altogether 3 things which he, in truth, never was. I am therefore faced with the singular task of defending RAEDER as politician, although it was precisely, as I shall demonstrate, his life principle to be completely detached from politics as officer, and to command an Officers' Corps and a Navy which were likewise committed to remain entirely free from politics. If the Prosecution levels such manifold and grave accusations at RAEDER, this is primarily due to the fact that they have constructed an entirely foreign notion of the German Wehrmacht

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namely the notion of an Admiral responsible for the foreign policy and for the outbreak of a war. I shall stand up against this conception and demonstrate that this conception is equally unjustified and unfounded as regards Hitler's National Socialist State. True, Hitler has repeatedly placed politics in the forefront of the Nation, and endeavoured to educate the Nation in one political direction only. Foreign countries know this, and they would therefore be all the more surprised by the fact that Hitler refrained from such political interference in one single instance. Every administration, every organization and every Police institution was run by Hitler on political principles with the single exeption of the Wehrmacht. The Wehrmacht and indeed the Navy in particular remained a long time and far into the War absolutely unpolitical, and not only did Hitler give Raeder an assurance to this effect, but Hindenburg as President had also given the same assurance. This explains the fact, which has also been made clear in this trial, that up to 1944 an officer could not be a member of the Party or suspended his membership if he were in the Party.

If I have made these preliminary reflections, it will be understood why Raeder, as shown by his interrogation, was disconcerted and amazed by these accusations which amount to a political charge. A man who is altogether soldier cannot understand why he is suddenly,

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and without any relation to his military duties, made responsible for things which at no time came within the compass of his activity.

I shall naturally discuss the military accusations, with the exception of the U-Boat warfare, which, for the sake of uniformity, has already received the attention of Dr. KRANZBUEHLER in his final speech for RAEDER too.

It will be seen from other military accusations - as for instance, in the case of Norway and Greece - that time and again the discrepancy between the points of view of politics and of the military is the following: RAEDER acted as Commander-in-Chief on the basis of military considerations, and the Prosecution calls him to account out of political considerations, thus considering military actions as political.

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I.

The first case of this discrepancy just described lies in the accusations which have been raised against RAEDER already for the period before 1933, which means before National Socialism. For this time the peculiarity has to be added that HITLER, the head of the alleged conspiracy for the waging of wars of aggression, does not even yet reign in Germany, and yet there is already supposed to exist a common conspiracy between HITLER and a part of the defendants. This is all the more surprising, as RAEDER, as a naval officer and since 1928 as Chief of the Naval Command (Chef der Marineleitung), had at that time nothing, but really nothing, at all, to do with National Socialism, and he did not even know HITLER and his coworkers in the Party. The accusations concerning the violations of the Versailles Treaty are included in the conspiracy by the prosecution, although the violations were not carried out under HITLER's leadership, but under the leadership or with the approval of the then democratic governments in Germany. This shows that the indictment does not only want to hit National Socialism with this trial, as has been emphasized again and again during the war and after the collapse, but, beyond it, it affects large circles in Germany who had nothing to do with National Socialism and partly even were direct enemies of National Socialism.

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1. For just this reason it was so extraordinarily important for me, in the presentation of evidence in the RAEDER case to clear up the question of the violation of the Treaty of Versailles, in minute detail and with the approval of/court the I have tried to do this. I am of the firm opinion that I have succeeded. I do not need to discuss in detail the US 50 precisely treated infractions which the prosecution has produced in document C 32. It should be sufficient if I refer to the extensive presentation of evidence, as well as the following facts:

Every single point was a mere trifle or else was a military measure, like for example, the anti-aircraft batteries and such-like, which were based exclusively on ideas of defense. RAEDER has plainly admitted that treaty infractions occurred, in which, however, the smallness of the infractions showed that these measures could not possibly be connected with an intention to wage a war of aggression. Going beyond this, I only need to point out that from the legal point of view a treaty violation cannot ipso jure be a crime. Surely the violation of a treaty between nations is no more permissible than the violation of a contract between private firms in commercial law. Such a violation is, however, not a punishable action, much less a crime. Also, according to the argument of the Prosecution an action would/be punishable only if the violation were the result of a criminal intention,

and so was aimed at aggressive war against the Kellogg Pact. However, the prosecution authorities themselves can no longer maintain this and have indirectly admitted it by no longer taking up these point during the cross-examination of witnesses.

2. The case is somewhat different with the charge only discussed in detail by the Prosecution during cross-examination concerning the participation of the German Navy in U-boat constructions in Holland, for

U.S. 41 which the Prosecution has relied upon C 156, the book by Naval captain Schuessler: "The Navy's Struggle Against Versailles", as well as on the statements contained in the notes of the naval historian, Admiral Assman

G.B. 460 in document D 854.

These documents prove that the German navy had a part in a U-boat designing office in Holland, namely, the firm

(N.V. Ingenieurskantoor voor Scheepsbouw). This participation falls in the period before the navy was under Raeder's command; the court will recall that Raeder did not become head of the navy until 1 October 1928, whereas participation in the Holland designing office dates back to 1923 and the following years. I beg to note, however, that in not a single case was a U-boat built <u>for</u> the German navy and that consequently no U-boats were purchased or put into commis by the German navy, either. In this connection I refer to the Versail

Doc.book I Treaty, Raeder exhibit Nr. 1. In article

S. 1 ff.

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188 ff. of the Treaty of Versailles are the regulations about the Navy. According to article 188 Germany had assumed the obligation of delivering her U-boats to the Allied Nations, or of dismantling them. This obligation Germany fulfilled completely. Moreover, article 191 stipulates the following:

"The construction and purchase of all underseas vessels, even for commercial purposes is forbidden in Germany."

It appears from this clear clause of the Treaty that the participation in Dutch firms was not a violation of the Treaty of Versailles. According to article 191, Germany was only forbidden to construct or purchase U-boats, moreover, strictly speaking, only in Germany. As a matter of fact, no U-boat was built in Germany against the Treaty. But as a matter of fact, no U-boat was built for Germany abroad, either. Participation in a foreign submarine designing office was not forbidden, nor was this the meaning of the Treaty of Versailles. The decisive point was merely that Germany did not create a submarine force. The Navy, however, was permitted to participate in a designing office, so as to be kept informed in this way, about the field of modern submarine construction and to gather information for the future, and thereby to lay the foundation for a possible construction of submarines later on, when permitted, by educating a technically trained

Doc.Book I, page 4

cadre. (See RAEDER Exhibit No. 2, LOHMANN Affidavit under I)

The above-mentioned documents, submitted by the Prosecution, prove that the submarines designed by the Dutch firm and built abroad were put into service abroad, namely in Turkey and by Finland.

Even if one takes the point of view that designing work also was prohibited, then what has been said in paragraph I is also valid here; the designing was limited to only a few submarines, so that the small number of them in itself proves that there cannot have been any intention to wage wars of aggression.

3. Even if the High Tribunal is unwilling to follow my preceding train of thought without more further development, going even beyond this the lack of an aggressive intention appears from the fact that the trivial violations of the treaty are in a certain way compensated for I take the liberty to refer to the second affidavit of Admiral

Doc.Book I, page ?

LOHMANN, RAEDER Exhibit No. 8. It appears from this document that according to the Treaty of Versailles Germany was allowed to build 8 armored ships, but, however, only built 3 armored ships, and it appears further that instead of 8 cruisers, only 6 cruisers were built up to 1935, and instead of 32 destroyers or torpedo boats only 12 destroyers and no torpedo boats were built. As a matter of fact, the navy stayed far behind what was

permitted by the Treaty of Versailles, with respect to the really important weapons, and especially in those which may be considered as weapons of offense and indeed to such an extent that in comparison the trivial violations in naval matters hardly count.

4. According to the Weimar Constitution of 11 August 1919, articles 47 and 50 (RAEDER Exhibit No. 3) the President of the Reich has Supreme Command of all the armed forces. In order to be valid the decrees of the President of the Reich, require the counter-signature of the Chancellor of the Reich or the appropriate Reich Minister, and thus the Minister of National Defense. "Responsibility is assumed with the counter-signature." Thereby, in National law it is absolutely clear that the responsibility rests with the Minister of National Defense, that is, with the Reich Cabinet and the President of the Reich. It is, of course, clear that before 1928, and so before RAEDER became the responsible chief of the naval command, a few measures were taken without the knowledge of the Reich Cabinet. In the presentation of evidence, however, it has been clearly shown, especially by the statement of former Reich Minister SEVERING, that from the moment when RAEDER became chief of the naval command, contrary to the statements of the Prosecution, no more secret measures were taken. SEVERING has confirmed that the MUELLER - STRESEMANN - SEVERING Cabinet, in a Cabinet meeting of 18 October 1928, obtained a clear picture of the secret measures of the armed forces by interrogating RAEDER as chief of the naval command and Haye as chief of the army command.

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Both RAEDER and HEYE, after they had given an explanation, were obliged by the Cabinet, in conformity with the above-mentioned paragraphs of the Reich Constitution, to take no measures in the future without the knowledge of the Minister of National Defense, that is, the Cabinet. At the same time the parliamentary cabinet established that the secret measures taken before RAEDER's time were only a question of trifles and expressly assumed the responsibility for them. If, however, the Cabinet, in conformity with the Constitution, assumed the responsibility, this is a legally and constitutionally effective proceeding which exonerates RAEDER as Chief of the Naval Command and relieves him of responsibility. It seems, therefore, inadmissible that the defendant, who no longer bears the responsibility, should be made responsible for actions for which the Cabinet assumed the responsibility.

The attitude of the Cabinet in the Cabinet meeting of 18 October 1928, however, further shows that all these actions cannot have any criminal intention to wage a war of aggression as their basis. For even the Prosecution will not want to assert that men like STRESEMANN, MUELLER and SEVERING had the intention of waging wars of aggression, but will have to believe SEVERING that STRESEMANN, MUELLER and himself only assumed responsibility for these violations because these violations were only based on ideas of defense. One will also have to believe SEVERING that

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thoughts of defense were justified, because in the twenties the danger actually existed, that Germany would be attacked, for instance by Poland, and then would no longer be in a position to defend herself with the small armed forces allowed by the Treaty of Versailles, a danger which had shown itself particularly impressive by Polish border attacks in East Prussia and Silesia as well as by the occupation of Vilna, and which increased, when all attempts by STRESSEMANN and MUELLER failed to realize the intention of the other powers to disarm as promised in the Treaty of Versailles.

Mr. Justice JACKSON admitted in his opening speech, how difficult Germany's position was and how justified her defense measures were. He said literally:

"It may be that, in the twenties and thirties, Germany stood before desperately difficult problems, problems, which would have justified the boldest measures, only not war."

I even will not go as far as Mr. Justice JACKSON, but I believe that the measures taken by the Navy are certainly covered by his own trend of ideas about the "boldest measures".

The British Prosecutor Mr. Elwyn JONES, attempted during the cross-examination of SEVERING to prove that RAEDER did not observe the obligations of the cabinet meeting of 13 October 1928, because SEVERING, according to his testimony

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was not informed of the construction abroad of the small submarines for Turkey and for Finland. Against this, two things must be considered:

a. During his testimony, SEVERING did not remember details, but only the fundamental and decisive questions, and moreover, he naturally relied on the competent technical minister, thus the Reichswehr Minister, concerning details.

b. According to SEVERING's testimony it was an exceptional case on 18 October 1928, when the Chief of the Navy High Command appeared before the entire cabinet. RAEDER as Chief of the Navy High Command was not obliged to inform all the members of the cabinet from time to time, but was, in accordance to the Constitution, merely obliged to inform the incumbent Reichswehr Minister. But RAEDER did this. Whatever the Reichswehrminister on his part submitted then to the other members of the Cabinet and the Reichstag, is not only beyond RAEDER's knowledge but is also not his responsibility. The Reichswehr Minister and the Cabinet bear the responsibility for this.

In conclusion, I take the liberty to point out only the following:

If, despite all this, the prosecution wants to consider the discussed violations of the Treaty of Versailles on the part of the Navy as an intention of aggression, the then incumbent Social Democratic or Democratic Government bears the responsibility for this..

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relating to this period.
With this the indictment collapses/ For to hold the then incumbent governments to account for the intention to wage wars of aggression, would mean to prosecute on this point "ad absurdum".

5. Also the treaty violations during the period from 1933 until the German - English Naval Agreement of 1935 show the same actual and juridical picture. Also during these approximately 2 year, no decisive expansion of naval armament took place. The only disputable accusation made by the Prosecution in this respect is

GB 461 in document D 855, which was submitted during cross examination. It concerns the report of Flottenintendant THIELE. According to this it was decided in March 1935, thus few months before the naval agreement, to make the plans for the "Scharnhorst" and the "Gneisenau" with 27,000 tons displacement, although at this moment limit of 10,000 tons diplacement according to the Treaty of Versailles was still formally in force for 3 months, in contrast to the 35,000 tons displacement provided for in the naval agreement of 1935.

In this, I beg to take into consideration that already in March 1935 Germany could count on a speedy conclusion of a German-English agreement, while much more time passes from the planning stage until the completion of a battleship, which cannot be counted in months, but in years.

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As a matter of fact, "Scharnhorst" and "Gneisenau" were not commissioned until 3 or 4 years after the Naval Pact, i.e. in 1938 or 1939 (see RAEDER Exhibit No. 2, affidavit Lohmann, under IV).

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The other matters enumerated by the Prosecution are again trifles; for instance, the selection (not the construction, as the Prosecution terms it) of 4 to 5 merchantmen (see C 166), or the construction of 5 E-boats at 40 tons each, (see C 141) which, for technical reasons, were constructed 12 torpedo boats of 200 tons each. The Prosecution cannot in all seriousness severely blame this all the more so as the above-mentioned deviations from the Versailles-Treaty were well known to foreign technical specialists or - as the witness Schulte-Moenting termed it succintly - they were an "open secret".

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6. And now the most decisive juridical angle in judging all developments until the summer of 1935. Rights accorded by a treaty between states are of equal validity with those accorded by Commercial Law. Breaches of agreement are considered adjusted and settled with the signing of a new agreement. In the present case the "Anglo-Germany Naval Agreement of 18 June 1935" - Raeder Exhibit No. 11 - stands for the new treaty. This Naval Agreement brings complete deviation from the Versailles Treaty with respect to the high-tonnage vessels as well as the U-boats. It is only on the basis of the ratio permitted Germany by this new agreement that the very small insignificance of the previous violations of the Versailles Treaty becomes apparent.

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10,000 ton cruisers were replaced by 35,000 ton warships , and the ban on the construction of U-boats was replaced by equality in U-boat tonnage. And, Germany's demands were not anr unreasonable; quite the contrary, His Majesty's Government of the United Kingdom, in the above mentioned document, explicitly confirmed the German proposal "as an exceedingly important contribution to future limitation of naval armaments."

This agreement between England and Germany maked the debate on the Versailles Treaty obsolete factually and juridically, as far as the Navy is concerned.

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II.

This Naval Agreement was generally welcomed on the part of England and Germany. The Naval Agreement was supplemented by a new agreement on 17 June 1937 (see RAEDER Exhibit No. 14). As proof that the navy has also violated the Naval Agreement, with aggressive intentions, the prosecution has raised two charges:

oc. Book , page ff.

1. In the Agreement of 1937 both contracting Governments were bounds to a mutual exchange of information; namely annually, within the first four months of every calendar year, with reference to details of the building program. According to document C 23, the navy violated this obligation in so far as it gave the displacement and the draught of both battleships "Bismarck" and "Tirpitz" which were being built at the beginning of 1938 as too low, namely 35.000 tons instead of 41.700 tons. The fact of this violation is openly admitted by RAEDER. But here as well, it is not such a great violation - as it is described by the prosecution, namely there is no violation which shows any grounds for proof of criminal intention. This is shown in the exhaustive descriptions in my presentation of evidence and in the testimonies of witnesses which I do not need to repeat here. It will be sufficient if I refer to the absolutely convincing

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testimony of ship building director Dr. h.c. SUECHTING which I have submitte
as RAEDER Exhibit No. 15. The tonnage increases demanded by the navy during
the construction were to be used exclusively within the concept of the
defensive, namely the idea to increase the armor plating of the battleships
and to arrange the bulkheads in such a way that the battleships should be
as much as possible unsinkable; a concept of the defensive which, as Dr.
SUECHTING emphasizes, has proved to be actually correct during the combattin
and sinking of the battlership "Bismarck". But as it is a question of concept
of the defensive, no aggressive intentions can be construed from this treaty
violation.

In judicial connection, it must be added that a right was conceded unde
certain conditions in the naval agreement of 1937 in articles 24, 25 and 26 that the
contracting governments may to deviate from the contracted agreements and especially
from the tonnage limitation of battleship, if any other sea power builds
or acquires larger battleships. This case of article 25 occured, and the
violation of the agreement consists solely in that, that the navy had certai
a right to build henceforth larger battleships but should have informed
England that Germany wanted to make use of her right. It concerns only the
violation of the obligation for exchange of information. How meaningless
this measure was, is proved by the alteration of the German-English Naval
agreement based on

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Doc.book I page 97 ff.

the London Protocol of 30 June 1938 which I have submitted in Document RAEDER Exhibit No. 16.

Already on 31 March 1938, that is only 6 weeks after

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the date of the document C 23, England on her part reported according to the London Protocol of 30 June 1938, that she must make use of the mentioned right, by virtue of article 25 and proposed therefore that the battleship tonnage will be increased from 35 000 to 45 000. This agreement was then signed by both countries on 30 June 1938, and thus the violation of agreement became illusory, as is seen from the

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document C 23.

GB 460

21. The British prosecutor has raised a second charge during cross-examination by submitting document D 854. It concerns the notes made by Admiral ASSMANN for his writing of history; on sheet 15 of which he writes that in the sphere of submarine building, Germany followed the terms of the German-English Naval Agreement the least; 55 submarines could be contemplated until 1938; but 118 were actually completed or contracted for. These statements by ASSMANN are actually incorrect. In reality, Germany followed strictly all the stipulations of the German-English Naval Agreement. Despite the assurance of equality of rights, Germany limited herself voluntarily in the Naval Agreement of 1935 to 45%; but she

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reserved for herself the right to increase this percentage at any time by friendly agreement with England. The presentation of evidence has shown (see the testimony of witness RAEDER and SCHULTE-MOENTING) that in December 1938 the appropriate negotiations took place between the British Admiral Lord CUNNINGHAM and the Grand Admiral RAEDER during which His Majesty's Government conceeded the increase up to 100%. It was not clear in the presentation of evidence whether this concession was put in writing, as it is to be assumed. Meawhile I could establish that a document must have existed, certainly from the mentioned Assmann-Document D 854, where on page 169 (in connection with page 161) the letter in question of 18 January 1939 is mentioned. It is necessary to say only in conclusion that the figure of 55 submarines mentioned by ASSMANN corresponds to 45%, whereas the figure of 118 submarines makes 100, accordingly ASSMANN and therefore the prosecution as well are wrong; actually there is no violation at all of the Naval agreement in respect to submarines.

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III.

I now come to the reproach made by the Prosecution that Admiral of the Fleet RAEDER had taken part in a conspiracy for waging wars of aggression and in particular supported HITLER and national socialism, despite his alleged knowledge that HITLER from the beginning had the intention of conducting wars of aggression.

1. How did RAEDER come to HITLER and how could he, or rather how must he, at that time have reckoned with an intention of aggression on the part of HITLER?

As I already mentioned, it is proved that RAEDER before 1933 had nothing to do with National Socialism and knew neither HITLER nor the Party collaborators; he got to kow HITLER on 2 February 1933 when he and the other commanders were introduced to HITLER by Baron von HAMMERSTEIN. As chief of the Naval Command Staff, there was for RAEDER only one superior, i.e. the President of the Reich von HINDENBURG, who, according to the constitution and the WEHRMACHT Law*) was the commander in chief of the whole Wehrmacht. As President of the Reich HINDENBURG had appointed HITLER as Chancellor of the Reich, and thus was of necessity created a connection between HITLER and the Wehrmacht. Any decision of RAEDER therefore did not come into consideration. As a subordinate to HINDENBURG he had to put up with the political decision HINDENBURG had taken as President of the Reich. The constitutional basis in regard to the Wehrmacht was in no way altered by

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*) See Exhibit RAEDER No 3 and 4, doc book I, pp. 9 ff.

the fact that HITLER came into power; As Chief of the Naval Command Staff RAEDER took no part in this political decision, any more than he had taken part previously when MUELLER of the Social Democratic Party or BRUENING of the Center Party became chancellors of the Reich.

There was moreover no cause for RAEDER to resign his post on account of this internal political decision, for HITLER explained to RAEDER and the other high officers at the first conference of 2 February 1933 and particularly also upon the occasion of the first naval report in the same month, that nothing would be changed in the Wehrmacht and that the Wehrmacht was to remain outside of politics as provided by the constitution and the Wehrmacht Law. As attested by the testimony of RAEDER and SCHULTE-MOENTING, HITLER at the delivery of the naval report explained his fundamental ideas in regard to a peaceful policy, for which, in spite of the friendly revision of the Versailles treaty that he was striving for, it was necessary to come to a reasonable understanding with England by virtue of treaty, in regard to the development of the Navy in keeping with the general limitations of naval armament. During this conversation HITLER clearly gave to understand that he did not want to institute any Naval Armament race and that the development of the Navy was to take place only by friendly agreement with England. This was a thought which absolutely corresponded to the fundamental viewpoint of RAEDER and of the Navy. It would have been absolutely out of question for RAEDER on this given basis to go to his superior /HINDENBURG and declare that because of HITLER he could no longer hold the leadership of the Navy.

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Now the Prosecution assumes that the men then holding leadership in Germany already knew HITLER's true intentions from HITLER'S book "Mein Kampf". The Prosecution cited as proof several quotations partly torn from the context from HITLER's 1924 propaganda book. This line of argument by the Prosecution does not seem right because HITLER wrote this book as a private individual, belonging to an opposition party. In this trial it has several times been pointed out that the statements of private foreign individuals are irrelevant, even when these foreigners are ever so well known and subsequently-as in HILTER's case- were given a position in their government. RAEDER could be allowed to assume, as could anyone else, that as Reich Chancellor HITLER would not maintain all the party doctrines he defended years before purely as a member of the opposition, particularly not when the statements of HITLER on military matter contradicted these former party ideas. Moreover for the Navy the relation to England was always decisive and in this very connection Hitler had even on page 154 of his book "Mein Kampf" declared verbatim:

> "For such a policy of course there was only one possible partner: England" *)

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*) RAEDER Exhibit No. 20. RAEDER Doc. Book II, p. 119

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Moreover it must be said in rebuttal of the quotations submitted by the Prosecution, that they are all taken from the 1933 edition and that, in spite of great pains the General Secretary's Office has been unable to procure an earlier edition, particularly the 1st edition of 1925 and 1927. It is a known fact that HITLER himself in later years made changes on many points in numerous places in his book; it follows that the quotations from the 1933 edition cannot without further ado be taken as a basis.

2. Would RAEDER in the following years have had to realize that HITLER wanted to depart from the described fundamental idea of a policy of understanding with England, and is it possible to follow the line of argument of the Prosecution that RAEDER should have refused his further collaboration at any given time before 1939?

I am of the opinion that this question must be answered in the negative, and that the necessity of negation results quite naturally from the combining of various facts which were submitted by the Prosecution or by the Defense during the demonstration of evidence:

a. HINDENBURG died on 2 August 1934, and the Prosecution reproaches RAEDER with having thereupon taken an oath and particularly that he in this oath put the Fuehrer in the place of the Fatherland. *)

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*) German transcript of session of 15 January 1946, page 2710.

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This case was sufficiently explained in the presentation of evidence. I must therefore only refer to the error made by
GB 215 the Prosecution in its assertion; the Prosecution itself produced document D 481 which indicates the official oath taken by the soldier of the Wehrmacht on HITLER's orders. This document is a law signed by HITLER, FRICK and BLOMBERG. According to this law it is ascertainable that it was not RAEDER, who replaced the word VATERLAND by HITLER, but that the latter himself had demanded that allegiance be pledged to him as Commander-in-Chief of the Wehrmacht by all soldiers. Before the issue of the decree concerning this oath, cleverly deviced by HITLER and so portentous for the following years, RAEDER had neither been informed of it nor had his advice been sollicited as to the textual draft of this oath, he was simply summoned to the Reich Chancellery without being given a hint as to what it was all about.

The question, what kind of oath is taken by a soldier is again a political one, a question of legislation upon which RAEDER in his capacity as soldier and Commander-in-Chief of the Navy had no influence.

b. The prosecution charges RAEDER with having been informed of many political decisions and of having, as Commander-in-Chief of the Navy, drafted on these occasions strategic plans and preparations. It is a question of the cases of the withdrawal from the League of Nations on 14 October 1933, the occupation of the Rhineland on 7 March 1936, the Austrian Anschluss in March 1938, the incorporation of the Sudetenland in the fall of 1938 and the establishment of the Protectorate of Bohemia and Moravia in March 1939. *)

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It deals principally with the documents designated in the footnote which I can refer to jointly in this connection.

There is one fact which is common to all these decisions namely the one, that RAEDER has not politically taken part in any of these decisions. RAEDER had never before been asked for any advice, he as Commander-in-Chief of the Navy, had no authority to collaborate in such decisions. RAEDER's sole activity consisted in receiving these documents and messages, and in the subsequent issue of military orders, which he was supposed to draw up in anticipation of the event, should belligerent complications arise. It is wholly incomprehensible how a Commander-in-Chief of a branch of the Wehrmacht can be reproached for having made strategic preparations for possibly forthcoming belligerent complications. I believe, that it is the same all over the world, an Admiral never takes part in political decisions, while being obliged to make certain precautionary preparations according to these political decisions of the Government. This again is a case of the discrepancy I have mentioned before with regard to the position of a military commander, which though considered by the Prosecution to be a political one, is a purely military positions.

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*) It refers principally to the following documents:
C 140 - US 51 of 25 October 1933
C 159 - US 54 of 2 March 1936
C 194 - US 55 of 6 March 1936
C 175 - US 69 of 24 June 1937
388-PS - US 26 of 20 May 1938
C 136 - US 104 of 21 October 1938.

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There should not be any doubt, that on the very same dates the foreign military commands, involved in political decisions or interested in them, were likewise making military plans.

No military commander would ever judge whether these political decisions of HITLER were crimes or merely offenses against International Law, and particularly not if he was never summoned to the discussions. Neither the withdrawal from the League of Nations resulting from the failure of trying to have all countries disarm - according to the Versailles Treaty - nor the occupation of the Sudetenland, nor the establishment of the Protectorates of Bohemia and Moravia could be regarded by the Prosecution as criminal activities committed by the uninterested Commander-in-Chief of the Navy. There certainly were deviations from the Versailles Treaty, but even the British Chief Prosecutor, Sir HARTLEY SHAWCROSS, himself declared on 4 December 1945 that "many objections against Versailles were possibly justified".

Even Justice JACKSON has, as quoted above explained that the boldest measures would have been justified for the purpose of a revision of this treaty, but not a war.

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*) transcript in German page 608.

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All these above mentioned measures of Germany were in fact accomplished without a war, thus they must be considered as being those Justice JACKSON had declared justified, the more so as all these measures were quietly tolerated, by foreign nations, even, as in the case of the incorporation of the Sudetenland, ratified by the Munich Agreement of September 1938 or by an agreement with the Government of the country in question, such as in the case of Austria should, in the cases of Austria and the establishment of the Protectorate of Bohemia and Moravia, the Prosecution rightfully considers from an impartial and retrospective point of view that HITLER had used most doubtful and possibly criminal measures for this achievement. That would be of no importance for the Commander-in-Chief of the Navy, because of the established fact that he had not been informed about these activities, and still less regarding the measures to be taken. It has been established, in particular, that RAEDER was neither informed of the details concerning the Austrian Anschluss nor of the kind of conference which ultimately led to an agreement with President HACHA. He never knew of the discussions with HACHA, nor of the menace of a bombardment of PRAGUE - expressed in the course of this discussion - in which case I might refer to the depositions of the witnesses ROEDER and SCHULTE-MOENTING, All these measures were therefore in the eyes of RAEDER, activities admitted by International Law, or agreements which could not lead him to interfere in any way or to make any inquiries of HITLER, quite apart from the fact that he as military commander would have had no right what so ever to do so.

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Moreover exclusively land operations would have been involved from the military standpoint even if complications had arisen, which is evident immediately from the location of the countries concerned. It would have been impossible if the almost completely uninterested Commander-in-chief of the navy had paid attention to these things, although hardly any Naval preparations were under consideration. One should keep in mind
US 26 the case of Czechoslovakia, in which connection document 388 PS has a provision that the navy is to participate in possible army operations by commitment of the Danube flotilla which for that purpose comes under the orders of the High Command of the army, a flotilla consisting of very small ships, that is of a few gunboats, if I remember correctly.

c. I further quote for the argument in this connection the words of Sir Hartley Shawcross of 4 December 1945 concerning the German- Polish non-aggression pact of 1934:

"Hitler, by concluding this treaty, convinced many people that his intentions were really peaceful." German transcript, page 63.

Consequently Raeder had to be convinced.

d. It is true that Raeder belonged to the secret cabinet council created in February 1938. The fact proved in the meantime that the secret cabinet council was purely a farce is equally correct. It is therefore unnecessary to deal with this point which was in the beginning considered so important by the prosecution.

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e. The claim of the Prosecution that RAEDER had been a member of the government and Reichsminister has been refuted in the same manner. This claim of the Prosecution has been

B 206 incomprehensible from the start. Document 2098 PS presented by the Prosecution only states in an absolutely unequivocal manner, that v. BRAUCHITSCH the Commander-in-Chief of the Army and RAEDER the Commander-in-Chief of the Navy hold a "rank equivalent to that of a Reich Minister". This proves, that he was no Minister but for reasons of etiquette held a rank equal to that of Reich Minister. This makes it evident that RAEDER was not assigned any political task through this decree of HITLER, as the Prosecution would like to have it. There is to be added the fact that through this decree he did not even receive the right to participate in cabinet sessions if he wished to do so, but, as stated by HITLER in the above-mentioned document only, "upon my order". This therefore means nothing more than that RAEDER could have been called upon to participate in a cabinet session if technical naval problems were involved. In reality this politically unmaterial, hypothetical case never did occur.

f. The participation in the Reich defense council on the

US 36 basis of document 2194 PS *)
can also not be considered incriminating. On the one hand it deals, as becomes evident from the text, only with "measures for the preparation of Reich defense", therefore not with political activity nor with activity connected in any political sense with aggressive War.

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*) Reich defense law of 4 September 1938

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Moreover, RAEDER, contrary to the claim of the Prosecution, accor-

B 250 ding to Document 2018-PS, a later issued Fuehrer decree of 13 August 1939, did not at all belong to the created Ministerial Council for Reic

Defense that time, and this simply for the reason that he was not a Minister. On the other hand other countries, two, have the institution of Reich Defense Council or Reich Defense Committee. I want to remind you of the well-known fact that there existed in the British Government already a long time before the first World-War a Reich Defense Committee,**) which was of much greater importance than the equivalent institution in Germany.

g. As the last item in this connection, I want to point out, that the claim of the Prosecution that RAEDER had been a party member has also proved untenable. It is true that RAEDER received the golden insignia of honor (Goldene Ehrenzeichen) from HITLER; this was nothing else, however, than the award of medal and it couldn't be anything else, because a soldier could not be a member of the Party. This becomes evident beyond doubt from paragraph 36 of the Wehrmacht Law, according to which soldiers can never engage in politics and which forbids them to be a member of a political organization. *)

Besides, I want to refer to the presentation of evidence, which proved sufficiently that RAEDER never had connections with the party, that he rather had differences of opinion with party circles and that he was spurned by typical National Socialists because of his political and religious attitude; for instance he had on GOEBBELS the same effect as a red rag on a bull.

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*) RAEDER Exhibit No. 4, Doc. book I, page 12.

**) for instance under BALFOUR and CHURCHILL.

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and this was no wonder either, for on the one hand he prevented the Party again and again from obtaining any influence on the officer corps of the navy, and on the other hand assisted the Church to the greatest extent contrary to the principles of the Party and saw to it that the spirit of the navy received a Christian basis. I may refer in this connection to the typical National Socialist phrase of BORMANN:

"National Socialistic and Christian concepts are incompatible." *)

In the same document BORMANN, as he so often did, expressed himself so strongly in a train of thought contradictory to culture against Christianity, so violently propagandized for the destruction of all Christian ideas, that this attitude toward the party sufficiently proves that RAEDER, as a convinced Christian never could have affiliated himself with the Party.**)

h. I have already stated that HITLER in 1933 said that it would be one of the fundamentals of his policy to make Germany by peaceful means a sound and strong nation; and that it was absolutely necessary for peaceful development to acknowledge British hegemony and to come to an agreement with England about the size of the German fleet and if possible even to come at an alliance. These ideas agreed with the fundamental attitude of RAEDER, who stated it in detail during his hearing. Within the limits of

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*) RAEDER Exhibit No. 121, Doc. Book VI, Page 524.

**) see also affidavit RONNEBERGER, RAEDER Exhibit No. 126, doc. book VI, page 543 and following, which refers to the same connection, in particular to the strong Christanity of RAEDER and to the fact that BORMANN is an avowed enemy of Christianity and of the Church.

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my defense,it maybe an open question, if and when Hitler abandoned that basic thought. For in any case Hitler has always emphasized this basic thought to Raeder and also supported it by deeds; this ever recurring thought runs like a red thread all through the years to the outbreak of war. The realization of this thought led to the conclusion of the German-British naval agreement in 1935, the conclusion of the German-British naval agreement of 1937, the agreement about submarines with Lord Cunningham in 1938 and to the London protocol of 30 June 1939 concerning the battleships; thus throughout the years of the reconstruction of the German navy runs always the same idea, namely ever the idea of agreeing with England, of acknowledging England's supremacy and of avoiding any difference which might lead to a break with England. Subsequently, in the full knowledge of all the documents and all the facts proved during this trial, it may be established that Hitler at some time, probably in 1938 may have become unfaithful to his own thought and that thereby he has become guilty of the tragic fate of Germany. In order to judge the accusations made against Raeder the decisive thing is not that which, must be acknowledged as being objectively true after having a knowledge of all facts but the only decisive thing is whether Raeder has realized or could ever possibly know of this deviation by Hitler from his own ideas. This however is not the case. Raeder could not guess, and even less know that Hitler had at any given time become unfaithful to his own politcal ideas, which he had repeatedly stressed and demonstrated and thus had become guilty of instigating the frightful danger of World War II

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RAEDER could not suspect or know that also in the last period before the war HITLER spoke to him differently from what he thought, and also spoke differently from the way he acted. In the matter of the Navy in particular the relatively slow rebuilding of the German fleet showed that HITLER intended to remain faithful to the train of thought I referred to. A change of mind on HITLER'S part in this connection was not perceptible; for a change of mind would have had precisely the result that he would have developed the navy to a larger extent than he did. He would then have had at least fully to exploit the possibility of the German British naval agreement as to the size of the respective fleets. According to the naval agreement the German fleet was allowed a total tonnage of 420,595 tons.*)
As a matter of fact this maximum was never reached. Even in regard to battleships Germany remained short of the naval agreement, with the result that the battleships "Bismarck" and "Tirpitz" were not available in the first year of the war and therefore could take no part in the occupation of Norway;
the "Bismarck" was completed only in August 1940, and the "Tirpitz" in 1941.**)

According to the naval agreement, Germany was allowed to have the same tonnage of submarines as England. Actually however, U-boat construction was so little speeded up, that at the beginning of the war in 1939 as the hearings proved Germany had available only the minimum figure of 26 submarines suitable for Atlantic service.
And further, as late as end of May 1939 according to document

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*) Affidavit Lehmann, Exhibit RAEDER No. 8, Dec. Book 1. page 41

**) 1 Affidavit Lehmann, Exhibit RAEDER No 2, Dec. Book 1, page 8.

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U.S. 27 L 79, the so-called "Little Schmundt" was instructed verbatim that "nothing is changed in the shipbuilding program".

All these must have awakened the strong belief in the commander in chief of the navy, from his point of view and from his field of action, that HITLER would stand by his oft stressed basic line, not to allow war to come to pass.

i. This strong belief of RAEDER - and this seems important - was to the utmost extent strengthened by the attitude of foreign countries:

Winston CHURCHILL wrote in 1935 in his book "Great contemporaries" *):

"It is not possible to pass just judgement on a personality in public life who has reached the enormous proportions of Adolf HITLER before his life's work stands revealed before us a whole . . . . . We cannot say whether HITLER will be the man who once again will unleash a world war in which civilization will go down irrevocably, or whether he will enter History as the man who has restored the honor and the peaceful intent of the great German nation and has brought it back cheerful, helpful and strong to the front rank of the European family of nations".

*) Exhibit RAEDER No 18, Doc.Book II, page 107

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One year later, at the Olympic Games in Berlin in the year 1936, the representatives of the foreign countries appeared in a body and greeted HITLER in a manner which, in its approval and partial enthusiasm was incomprehensible to many Germans who were sceptically inclined. Subsequently the greatest foreign politicians and also members of various Governments have visited HITLER and reached a complete understanding with him, and finally in the autumn of 1938 an understanding was again reached under Chamberlain and Halifax which strengthened HITLER immeasurably, and by means of which HITLER tried to prove to the Germans, how correct all his actions had been, as they were being recognized by foreign countries. The proclamation defining their aims, which was issued by HITLER and CHAMBERLAIN in Munich on 30 September 1938, cannot be estimated high enough. I would therefore like to cite the two first decisive phrases from RAEDER Exhibit No. 23, Document Book II, Pages 127/28:

> "Today we had a further discussion, and agree in the realization that the question of German-English relations is of primary importance for both countries and for Europe.
>
> We regard the agreement which was signed last night and the German-English Naval Treaty as symbolic of the wish of our two nations never again to conduct war against each other."

I believe, that these references are sufficient, and ask: Can it be demanded, that a German Grand-Admiral, who has never been a politician and always only a soldier, should have looked farther ahead in judging

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HITLER than the great British statesmen CHAMBERLAIN and CHURCHILL? I believe that the form of the question already harbors the negative form of the answer.

3. The Prosecution can only seriously confront these numerous points of view with some few documents which might speak for RAEDER's knowledge of HITLER's aggressive plans. The Prosecution has presented/indeed innumerable document in which it pointed out that RAEDER or the Naval Operations Staff or the Supreme Command of the Navy received a copy. However, in a very considerable number of documents the Prosecution could not state anything beyond the fact that RAEDER received a copy, while a realistic connection on the subject did not exist for the most part and was not presented by the Prosecution, either. It is naturally not surprising that military documents, for the sake of uniformity, went to all branches of the Wehrmacht, even if in individual cases one branch of the Wehrmacht was not at all or hardly concerned with them. Of all these documents in the [illegible] of RAEDER, only the 4 documents which the Prosecution described as key documents because of their importance can be really incriminating. These are the four speeches of HITLER of 5 November 1937, 23 May 1939, 22 August 1939, 23 November 1939 to the Commanders-in-Chief. *)

The Prosecution claims, that these speeches show participation in the conspiracy, and that it could be clearly recognized from these

*) See Documents 386 PS - US 25
L 79 - US 27
798 PS - US 29
1014 PS - US 30
789 PS - US 23.

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speeches that HITLER wanted to wage wars of aggression. I would therefore like to state my opinion in detail as to these documents, and in so doing show why these documents cannot influence the picture which I have given as a whole.

Doubtlessly these key-documents are of the utmost importance for subsequent historical findings as to what trains of thought have directed HITLER; and for the reason that they are expressions of opinion by HITLER, and in spite of the large extent of the captured documentary material there exist almost no written drafts by HITLER. First of all the thought is also attractive that the contents must be true, because they deal with expressions of opinion which were only expressed before a small circle, before which HITLER, in accordance with his nature, preferred to express himself openly rather than in his public speeches. Even though I do not fail to recognize the value of the documents in any way, I still believe that the Prosecution overestimates by far the importance of these 4 documents. They certainly are key-documents to a certain extent, and that inasfar as they provide the key to the recognition of HITLER psychologically and to the understanding of HITLER's methods. The documents, however, are not a key to the real intentions of HITLER, and particularly not a standard for the final conclusions which the listener would have had to draw from these documents, according to the opinion of the Prosecution. In order to comprehend completely the value of the documents in this connection, I would like to group in advance several general points which apply equally to each of these 4 documents. All these points limit the evidential value of these documents, which was overestimated by the Prosecution:

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Point a. None of these speeches were recorded in shorthand, and therefore we do not have the actual text of any speech. In accordance with this, Hossbach in the record of 5 November 1937 correctly chose the indirect address, just like General Admiral Boehm in his record of the speech of 22 August 1939 (Raeder Exhibit No. 27, Document Book II, Page 144 ff). Surprisingly and not quite correctly, Schmundt chose the direct address in the record regarding 23 May 1939, although it is not a literal record; however, he was at least careful, and stated in the beginning that Hitler's statements were being reproduced "according to the sense". The weakest documents, to wit, the two versions of the speech of 22 Agust 1939, submitted by the Prosecution, 1014 PS and 798 PS, have chosen the direct address, and the authors of this document whose names are unknown, have not even considered it necessary to give an indication, as was done by Schmundt. However this may be, in considering the documents it must be kept in mind that they were not reproduced word by word, and that therefore the reliability of the reproduction depends on the manner of work and attitude of the originator of the document, especially on the fact of if and how many notes the individual made during the speech, and when he made his record. In connection with this it appears important that the Adjutant Hossbach, as is shown by document 386 PS, only made the record a full 5 days later, to wit, only on 10 November, while the speech had already been made on 5 November. In the case of Schmundt, a date for the record is missing altogether, and likewise in the two Prosecution-documents regarding the speech of 22 August 1939. The latter also lacks

the signature, so that in this case it cannot even be ascertained who bears the responsibility for the record at all. The same applies to the document regarding the speech of 23 November 1939. So many formal mistakes and just as many doubts concerning the value as evidence and relieability of the documents.

Things are different with the document of Boehm, who in his affidavit, RAEDER No. 129 certifies, in lieu of oath, that he wrote down Hitler's speech simultaneously, and of particularly important parts jotted down the exact text, and who furthermore certifies that on the same evening he wrote down the final draft which has been submitted here. If in all these documents the true text does not exist, then it is plain how important it is if it can at least be established that the record was made simultaneously with the speech or at least on the very same day, and not, as in the case of Hossbach, 5 days later. With the best of memories even the best Adjutant, who daily has to handle quite many new things, can not possibly make an absolutely reliable reproduction of a speech after 5 days.

Point b. Just as important is the second point, to wit, the fact that contrary to other military documents these are not official documents with a distribution list, therefore not documents which were subsequently received by those concerned. That the documents were not received by RAEDER was established in the evidence by him and the witness Schulte-Moenting, apart from the fact that it is already shown by the lack of a distribution list on the document.

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This point particularly, appears of great importance to me. Listening to a speech once - and Hitler as is well-known spoke extraordinarily quickly - does not move the listener to final conclusions in the same way as the presentation of a record, by which he can always make certain subsequently about the contents of the speech. We who have come to know these speeches in the proceedings by way of writing and have again and again judged them by the wording, naturally consider the individual words and application of phrases more important than we would have done with a quickly-delivered address. In addition to this comes the fact that all of us easily tend to lend more importance to the individual application of phrases, because all of us now can overlook everything better from the present standpoint and out of more extensive knowledge; because we do not only have one speech to base our opinions on, but also all speeches and in addition all the many other documents which show the historical development. In discussing these documents it must again and again be kept in mind how different the individual listener will react to the spoken word, and how frequently, after a few hours even, the reports of various listeners will differ from one another.

Point c. The Prosecution sees in these speeches of Hitler the basis of the conspiracy, and presents it in such a manner, as if Hitler had on this occasion consulted with the Commanders, and had then concluded a certain plan of conspiracy with them, and had finally reached a certain decision. The Prosecution must maintain this, because in this lies the basis of a conspiracy, which can only then be spoken of if something is being planned in common. In reality, contrary to what the Prosecution

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states, no influential group of Nazis assembled in order to examine the situation and to make decisions, but it was rather a one-sided presentation by Hitler in which no discussion and no consultation took place. No decision was reached, either, but Hitler rather spoke quite generally about possibilities of developments (see Hossbach-document), if one could speak of resolutions at all, it was merely a matter of the sole decision of Hitler. All this stands in contrast to a real conspiracy. I furthermore have the impression that the Prosecution in its conception of a conspiracy to wage wars of aggression, has formed for itself a completely false picture of the real power conditions in the National-Socialist State. In my opinion it fails to recognize the characteristics of a dictatorship, and it actually may be very difficult to understand the immeasurable dictatorial power of Hitler if one has not personally constantly lived through the whole 12 years in Germany, and in particular in its development from the first beginnings until it finally became a dictatorship, which worked with the most terrible, the most horrible and the most undignified human terror. A dictator like Hitler, who furthermore apparently exercised an immense suggestive and fascinating force, is not the President of a parliamentary government. I have the impression that the Prosecution in judging the situation as a whole has never completely freed itself from the ideas of a parliamentary government, and it has never taken the uncompromising work of a dictator into account.

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The extent to which the idea of a conspiracy between him and the members of the Cabinet or between him and the Commanders is averse to Hitler's mind became evident in the course of this trial through numerous examinations of witnesses. Particularly striking in that respect, was the testimony of the Swedish industrialist Dahlerus, who by reason of his contacts with England and with Germany - in each case equally excellent and extensive - was in course of time enabled to obtain an objective picture of England as well as Germany, and who during his negotiations with Chamberlain and Halifax on one hand, and Hitler and Goering on the other hand, was best prepared to recognize the difference between the Parliamentary British Government and the German Hitler Dictatorship. The accounts of Dahlerus prove convincingly that the difference was such that no bridging-over was possible. After having spoken with Chamberlain and Halifax a discussion with the Cabinet took place, naturally, before a final decision was taken. On the other hand, in the night of 26 to 27 August, 1939*) when Dahlerus had a discussion of the utmost importance with Hitler in which only Goering was present, Hitler at once made 6 propositions, without saying a word to any of the Cabinet members or any of the military commanders, without even advising with Goering who sat there silently; proposals, by the way, which in no manner were in line with what he had said to Sir Neville Henderson. A stronger argument against a conspiracy with Commanders or members of Cabinet there hardly exists, unless

*) German transcript of Court Session, page 6122 and following pages.

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reference be made to the equally important fact which the witness Dahlerus added, namely that during the entire 2-1/2 hours Goering did not once dare to open his mouth, and that it was a humiliation to see the degree of servility which Hitler demanded of Goering, his closest associate.*)

Item d) All of these Hitler speeches are full of contradictions. Such contradictions naturally impair clarity of thought, and they rob the individual thought of its importance. Reading documents in their entirety, the number of contradictions becomes evident, a fact on which a remark by Admiral Schuelte-Moenting during examination and cross-examination was much to the point. It is just because of such contradictions and inconsistent thoughts that the evidential value of documents is diminished. It is quite natural that for a military Adjutant such as Hossbach or Schmundt, it is difficult to record an unclear and contradictory train of thought; it is equally easy to understand that a military Adjutant will be inclined to introduce as clear a line of thought as possible, and because of such endeavor he may happen to stress thoughts which have become clear to him more strongly than they actually presented themselves in the orally pronounced word. To this should be added the very appropriate remark of Reader – who not only points to contradictions, but to Hitler's extraordinary sense of imagination, and who in that respect termed him "Master of bluff" **)

Moreover, in every [illegible] speech of that type Hitler followed a very

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*) German transcript of Court Session, page 6145

**) German transcript of Court Session, page 9654

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definite tendency. He had a definite purpose in view namely to bring about a desired impression on all or some of his hearers, either through intended exaggeration or by making things appear deliberately harmless, depending upon the purpose he pursued. While he spoke, Hitler followed the intuition of the moment. As Schulte-Moenting termed it, he freed himself of his concept. He thought out loud and wanted to carry his hearers with him, but he did not wish to be taken at his word.*) One must agree with me / that with such practices and such purposefully designed speeches there is at this time nothing really reliable to go by in order to discover Hitler's true opinion. In addition to that there is the following point of view for all these documents in general:

Item c. Following his address of 23 May 1939 ("Small Schmundt"). Raeder had an interview with Hitler alone, in which he called Hitler's attention to contradictions in that address and, on the other hand, to contradictions deriving from the words - a remark previously made to him by Hitler - that under all circumstances he would also settle the case of Poland peacefully. Hitler then calmed down Raeder/and told him that he, Hitler, had a firm hold of matters, politically. This was stated by the witness Schulte-Moenting **) who added that Hitler allayed Raeder's fears by an example of the contradiction between the speeches of 23 May 1939 and his other statements. He told him, that for him (Hitler) there were three ways of keeping things secret:

German transcript of Court Session of 22 May 1946, afternoon, page 10 006

same transcript, page 9 996

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firstly, the conversation with someone without other witness; secondly the thoughts which he, HITLER, kept to himself and, thirdly, thoughts which he himself did not even think through to the end. I believe this manner of thought illustrates most strikingly how little reliance could ultimately be placed in statements made by HITLER, before a small or large group of people. It seems to me quite natural, then, that in his deliberations RAEDER kept neither to HITLER's general speeches nor to the address to the Commander which was discussed here, but that he went solely by what HITLER had told him when alone with him. In that respect, however, testimonies by SCHULTE-MOENTING, BOLHM and ALBRECHT are in agreement in that they prove that as late as the year 1939, HITLER still gave RAEDER repeatedly the explicit assurance that there would be no war; that is, he did this on occasions when for some reason or other RAEDER was particularly worried and wanted to call HITLER's attention to dangers a head.

In conclusion, I therefore believe it may be said that the so-called key documents are extremely interesting for a psychological opinion on HITLER; their evidential value as regards HITLER's real intentions, however, is very circumscribed and weak. No one can expect RAEDER to accept for his guidance, tendencious speeches made by HITLER before his Commanders on the spur of the moment, but he based himself on assurances given him by HITLER, with no one else present, and on the fact that until

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German transcript of court session of 22 May, afternoon, page 9 996
Affidavit by General Admiral BOLHM, RAEDER exhibit No. 129, I
Affidavit by General Admiral ALBRECHT, RAEDER Exhibit No. 128

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the summer of 1939, until the outbreak of the war, these assurances were in perfect accord with facts and HITLER's actions, namely with the four Naval Agreements and the Munich Pact. There is some justification for RAEDER's not permitting himself to have this his basic attitude shattered by the speeches to the Commanders-in-Chief, though undoubtedly of a suspicious nature, but that he held steadfastly to his belief that HITLER would not deceive him. From the fact that we subsequently come to find that after all HITLER deceived RAEDER in his private conversations, as well as by his special method of 2nd and 3rd classification of secrecy as described above, no guilt is attached to RAEDER, but solely to HITLER. Considering the voluminous amount of evidential matter, there is no justification in it for evidence proving that even in 1938/1939 RAEDER planned for a war of aggression, in violation of International Law: it reveals only the intention of the part of HITLER to engage in a war of aggression, in violation of International Law.

Having dealt with the key documents in a general manner, I am now asking the Tribunal's permission to add a few points to each individual document, since the Prosecution over and over again stressed such documents as basis for their charge of conspiracy.

US-25 a) Hossbach document, 386-PS, discussion of 5 November 1937 in the Reich Chancellery:

The critical phrases of this document cannot be refuted, and they were cited often enough by the Prosecution. In discussing that document is should at the same time be taken into consideration that GOERING and RAEDER unanimously stated

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that HITLER announced in advance that he wished to express a certain trend by his speech. HITLER was dissatisfied with measures taken by Field Marshal von BLOMBERG, and especially those of Generaloberst v. FRITSCH, the Commander-in-Chief of the Army, and he felt that rearmament made but slow progress in the army. As a result, HITLER made a point of exaggerating, a fact known only to GOERING and to RAEDER, so that it is but natural that the impression of that speech on NEURATH, who had no idea about this intenti was entirely different and deeply alarming. It is interesting to note that HITLER did not fully get what he wanted, because the two last paragraphs of the document indicate that to some extent BLOMBERG and FRITSCH saw through HITLER's scheming, and that his exaggerations failed to deceive them. Though on similar occasions HITLER did not permit discussions, BLOMBERG and FRITSCH intervened on this occasion and pointed to the need of preventing England and France from lining up as Germany's adversaries. BLOMBERG explained the reasons for his protest, and in the penultimate paragraph the document unmistakably expressed his scepticism as to HITLER's words, in that he remarked that under such circumstances he would not be able to carry out his planned vacation abroad scheduled to begin 10 November. It is equally interesting to note that thereupon HITLER came round and, in contrast to his early statements, declared himself convinced of England's non-participation, and that, consequently, he also does not believe in military action by France against Germany. The lack of tenability of HITLER's ideas shown in this document

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finds further expression in that he took as starting point for his statements an idea truly phantastic, namely an Italo-French-English war or - equally phantastic - a civil war in France. Continuing such contradictions, HITLER mentioned in his speech the application of force on one hand, an attack by Poland against East Prussia on the other hand - something which bore out a defensive idea only; - and in regard to Czechoslovakia he said that in all probability England and France had already written Czechoslovia off their books without further ado. This hint is an indication, however, that HITLER was prepared to negotiate, and this is in keeping with actual historic developments: he mentions that Austria and Czechoslovakia will be brought to their knees but, nevertheless, one year later, in March as well as in September 1938, he carried on negotiations and settled both questions without war. This fact in particular seems very significant, in that it proved to RAEDER by the events which followed that he was right in not ascribing unduc importance to HITLER's rash words of 5 November 1937, because they were not supported by the fact that in reality HITLER, at a later date, carried on negotiations.

RAEDER was also right when, during his interrogation, he pointed to the 2nd Naval Pact that had been concluded with England just a few months earlier, and that as a result he could not really expect HITLER seriously to leave path on which he was engaged.

And as a last point of view: Throughout its entire length, the document is dealing with political questions on one hand and with possible land operations

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on the other. RAEDER had nothing whatever to do with political questions because he was no politician, while NEURATH as Foreign Minister naturally had reason to place greater importance on HITLER's political attitude. It is of equal importance that NEURATH testified that, as a result of that speech, he too asked HITLER in a confidential interview for his personal attitude, and that he refused to continue in the Foreign Office because HITLER stated that those are his actual intentions. To me it seems typical of HITLER to declare to one person, namely NEURATH, that perhaps he would go to war, while he told another person, namely RAEDER, that he would under no circumstances make war. This difference in expressing his position obviously can be explained by the fact that at that time he no longer appreciated NEURATH as Foreign Minister, because he realized that in the foreign policy which he proposed to follow, NEURATH would no longer be as yielding as the successor he had in view, RIBBENTROP. On the other hand, at that time he still wanted in any case to keep RAEDER as Commander-in-Chief of the Navy. This is another instance of HITLER's method of acting as the situation demanded, always and without any compunction paying homage to the principle: The end justifies the means.

b) HITLER's speech of 23 May 1939 ("Small Schmundt").

US 27 L 79:

Here HITLER expresses himself once more in a most dubious fashion. He speaks of a program of aggression, of the preparation of a planned attack and of the decision to attack Poland. I in no way fail to recognize

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that there is good reason for the Prosecution to cosider this document as particularly good evidence. I believe, however, that in the case of RAEDER, and taking into account the numerous points of view I pointed out, the value of this document as evidence is very much less than the Prosecution is inclined to think, and much less than warranted by the impression first gained from the wording of the SCHMUNDT version. SCHMUNDT obviously made an endeavor to formulate HITLER's contradictory, phantastic and highly chaotic statements along the lines of his exact military thinking. This gives the document a clarity which is not that of HITLER. We do not know when SCHMUNDT prepared the document, and SCHMUNDT failed to show the copy he had made to other interested parties. During his examination and cross-examination the witness Admiral SCHULTE-MOENTING pointed to the contradictions of this document in particular which I need not repeat here. Of greater importance is the decisive point, the contradiction between these words and the words which HITLER at the same time spoke to RAEDER, and which always pursue the same old path, namely that he does not intend war and that he would not make excessive demands. RAEDER was horrified at that speech, and he did not calm himself until after he had a private conversation with HITLER, directly after that speech. As HITLER assured him in that personal interview that under all circumstances he would settle also the case of Poland in peaceful manner,

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he believed him, and he had every right to conclude HITLER was telling him the truth in answer to a question equally precise. I refer to the very precise statement on that document during the RAEDER examination *) and the examination of the witness SCHULTE-MOENTING. **) I especially refer to the comparison HITLER used (according to SCHULTE-MOENTING's testimony), stating that nobody would go to Court if he had received 99 Pfennigs while the dispute involved one Mark, and concluded from it that he had received what he had asked politically, and that there could not be war because of the last political question, namely the Polish Corridor.

All the statements made by witnesses whom I called, and among them the deposition by DOENITZ is not the last in importance, – to the effect that, incidental to the last U-boat manoeuvers in the Baltic Sea in July 1939, RAEDER expressed his firm conviction that there would be no war - prove that RAEDER himself did not want war and that in that respect he relied on HITLER's assurances. RAEDER, furthermore, knew that the navy was absolutely unfit for a war at sea against England; he had explained that to HITLER time and time again: he trusted HITLER's words and was confident that also in the Polish question HITLER would resort to negotiations again and - as shown by the testimony of the witness DAHLERUS - negotiations were in fact taking place, even successful negotiations in the beginning. The reason why the attempt finally failed after all and that it had to come to a second World War was stated in detail by the witness DAHLERUS, who thus show portrayed the awful tragedy of this event.

German transcript, page 9658
**) same transcript, page 9996

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It seems important to me that up to August 1939 not only the witness DAHLERUS but also CHAMBERLAIN still believed in HITLER's good intentions. Therefore, here too we have the same question again and the same answer: One cannot expect RAEDER as a soldier to have been more farseeing and to have recognized HITLER's dangerous ideas, if men like CHAMBERLAIN, HALIFAX and DAHLERUS themselves had not yet seen through HITLER at that time.

If I myself have referred to the seriousness and the incriminating character of this document, may I ask you to take into consideration that the incriminating character, just as in the document of 5 November 1937, concerns itself with political matters. As defense counsel for the Commander-in-Chief of the Navy, I have to judge the facts, not from the political but from the military aspect. From a military viewpoint, however, it is impossible to follow the arguments of the Prosecution under any circumstances, for the military are not authorized to take part in decisions of war or peace, but are merely obliged to make such military preparations as the political leaders consider necessary. In no country of the world does an Admiral have to give an opinion as to whether the possible war, for which he must make plans is a war of aggression or a defensive war. In no country of the world does the decision of the question as to whether war is to be waged rest with the military, but on the contrary is always left to the political leaders, that is to the legislative bodies.

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RAEDER

Accordingly, article 45 of the German constitution stipulates that the President of the Reich is to represent the Reich in questions of international law and stipulates further:

"The declaration of war and the conclusion of peace take place by national law."

Therefore, the question whether a war was to be waged against Poland rested with the Reichstag and not with the military leaders.

Professor JAHRREISS has already explained that in the legal development of the National Socialist state these decisions rested in the last analysis exclusively with HITLER. From the viewpoint of my RAEDER case it is of no consequence whether HITLER would be regarded as legally authorized to start a war himself, as he actually did in the fall of 1939. The deciding factor is only that in any case the military leaders, from either a practical or a constitutional point of view, do not have to participate in this decision. It is an untenable thought if the prosecution tries to regard as a crime every act of military planning which has taken place on the part of Germany; for the military leaders, who merely receive the order to work out a specified plan, are neither authorized nor obligated to decide whether the execution of their plan will later on involve an aggressive or a defensive war. It is well known that the Allied military leaders rightly hold the same viewpoint. No admiral or general of the Allied armed forces would understand it if someone should bring a charge against him because of military plans that were made on the Allied side

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a long time before the war. I do not have to explain this any further. I believe it will suffice if I refer, for instance, to the RIBBENTROP document exhibit No 221. This is a question of a secret document, which, according to the title concerns "Second Phase of the Anglo-French General Staff Conferences". From this document it appears that exact plans were worked out on the part of the Allied forces for a war embracing many countries; plans which, according to this document include a war in Europe and a war in the Far East. There it expressly says that the French and British High Commands in the Far East "worked out a joint plan of operations." There it expressly speaks about the importance of the possession of the Belgian and Dutch national territories as a starting point for the beginning of the offensive against Germany, and the decisive point for this in this parallel military case seems to me to be the fact that this document is dated from the same month as HITLER's speech to the commanders-in-chief, which has already been discussed, namely, May 1939. The document bears the inscription: "London, May 5th 1939".

c. Address of HITLER to the Commanders-in-Chief on 22 August 1939 at the Obersalzberg.*)

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*) See documents: 798-PS - US 29
1014 PS US 30
Exhibit RAEDER No.77, Doc.book II
page 144.

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Regarding the value as evidence of both the documents 1014 PS and 798 PS submitted by the Prosecution, for the sake of brevity I should like first of all to refer to my previous statements which I made to this Court, when I made the formal proposal to cancel Document 1014 PS. Although this high Tribunal did not accept this proposal, I still believe that my statements on the limited value of this document as evidence are important , in so far that only an very small value as evidence can be attached to both these documents and particularly to Document 1014 PS. The American Prosecution, when submitting these documents, duly pointed out, *) that the Court should take it into consideration, should the Defense be able to submit a more accurate version of this speech. In accordance therewith, I submitted the Reader Exhibit No. 77, **) a version coming from the witness Generaladmiral BOEHM, and believe to have shown within the framework of the evidence that it is here a question of a more accurate version, than the versions of the Prosecution documents. Thereupon, Sir David Maxwell-Fyfe handed in two documents under Nos. GB 464 and GB 465 in which he compares in the most scrupulous way BOEHM's version with the versions 1014 PS and 798 PS, by which he considerably facilitated the comparison of these documents. In order on my part to facilitate also this comparison for the high Tribunal and for the Prosecution, I requested Generaladmiral BOEHM in the meantime to compare the versions under consideration himself also and

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*) Transcript of session, 26 November 1945, page 196, in the German language;

**) Document Book RAEDER II, page 144.

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that by using the compilations of the British Prosecution mentioned just now. The result is to be found in BOEHM's Affidavit which I submitted as RAEDER Exhibit No. 129.

When surveying all this material, it results that Document 1014 PS is extremely incomplete and inaccurate, all the more so as, apart from its formal deficiencies, it is only 1½ pages long, and for this reason cannot be an adequate reproduction of a 2½ hours' speech.

Document 798 PS no doubt is better, but also reveals numerous inaccuracies as shown by BOEHM's Affidavit. It is not a question of every passage. The point, however, is that precisely some of the most important passages from which the Commanders-in-Chief might more likely be charged have actually not been spoken, according to BOEHM's sworn statement. According to BOEHM's Affidavit it is not true that HITLER declared, that he had decided as early as Spring 1939, to attack the West first of all, and only afterwards to attack the East. Nor have the words been used: " I only fear that at the last moment a filthy fellow will submit me an offer of mediation, we shall continue in the pursuit of our political goal". And the most decisive thing is that the words: "Annihilation of Poland in the foreground, the aim is to eliminate the living forces and not to reach a determined line", have not been used; HITLER only spoke of the breaking up of the military forces.

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These differences in individual words and turns of phrase are very important. For the differences lie precisely in the sharp phrasing to which the Prosecution frequently drew attention, and from which the intention of a war violating international law, even the intention to assassinate civilians, can be derived. If these phrases had been spoken, we would justly reproach the Commanders - in - Chief present with having waged the war at Hitler's order, in spite of the criminal end in view. If, however, these sentences have not been used, but, as Boehm testifies under oath, merely sentences aiming at the establishing of a military goal, the Prosecution cannot reproach any of the Commanders-in-Chief present with having remained at their posts. No one can in earnest demand of an Admiral the resignation of his post a few days before the outbreak of a war, thus shaking the military power of his own Fatherland. I am quite sure that the most serious reproaches can be levelled at any rate against Hitler's attitude after the Munich Agreement up to the outbreak of the war in Poland, but- and this is decisive for the Raeder case- not against the military Command, but exclusively against the political Fuehrer. We know that Hitler himself also admitted this, and evaded the responsibility by committing suicide, without having the slightest regard even for the life and the well-being of the German people during and especially at the end of the war.

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d. HITLER's speech delivered to the Commanders-in-Chief on 23 November 1939 : *)

I believe I can cut it relatively short with regard to this last key document. Again, it is a document without signature, the author of which, therefore, is not known, and without any indication as to the date of writing. It is no official transcript; again it pursues a special trend. Early in November 1939 a serious difference arose between HITLER and the Generals; for HITLER intended to start the offensive in the West immediately, whereas the Generals were of a different opinion, and apparently hoped that the outbreak of a real World War might still be avoided. HITLER's dissatisfaction and annoyance with his Generals show themselves clearly. In consequences of this, he strives to show, by customary repetition of his former actions, what he has accomplished, and further to show that he has always been in the right. It is really a typical HITLER speech, which corresponds to his public speeches in which he also loved to put on airs and to boast of being gifted with genius. HITLER, after all, belonged to those people who always believe themselves in the right, and avail themselves of every opportunity to prove it. He further took the opportunity of stifling at birth, by threats, resistance in high military circles, resistance which had become known to him, and in this way of establishing his dictatorship. It is absolutely significant, when he says literally in this document: "I shall not shrink from anything and will destroy everyone who is against me." *)

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*) see Document 789 - PS - US 23.

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This has also been recognized by leading foreign military personalities. I refer for example to General Marshall's official report, *) which speaks about the " Lack in far-reaching planning in military respect" and in particular about the fact that the German High Command did not have an all-embracing strategic plan, and points out in this connection that "Hitler's prestige reached the stage that one no longer dared to oppose his views."

Finally it only remains to be pointed out in this last key-document that at this time the war was already in progress, and that the higher military officers cannot be blamed if in the war they strove in all their plannings to come off victorious. The Allies were also planning at the same time. I refer to the documents RIBBENTROP Exhibit No. 22 and RAEDER Exhibit No. 34 **) The former document dates from 1 September 1939; it is a confidential letter from General GAMELIN to DALADIER, and contains the basic idea that it is necessary to invade Belgium in order to wage the war outside the French frontier. The latter document deals with military plans in the same way, in a confidential letter from General GAMELIN to General LELONG, military attaché of the French Embassy in LONDON, of 13 November 1939, and also concerns the enterprise in Holland and Belgium planned by the Allies.

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*) Raeder Exhibit No. 19 Document Book II, page 116/17,

**) Rader Document Book II, page 180.

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IV.

I now come to the events of the war-time period. I think I have shown that the Navy had an extremely insignificant part in all events prior to the War, and that the transactions in which the Navy was authoritatively involved were carried out on a peace basis, namely, on the basis of the Naval Treaty with England. When the war nevertheless ultimately broke out on the 3 September 1939, also involving England, a regrettable incident occurred at the outset, on the first day, namely the sinking of the "Athenia", from which the Prosecution attempts, in exaggerated terms, to construe a ponderous moral accusation against Raeder, not so much indeed on the basis of its actual military side, that is, the sinking, which my colleague Dr. Kranzbuehler has already discussed, as on account of an article published in the "Voelkischer Beobachter".* Were the statement of facts brought forward by the Prosecution correct, the moral accusations against Raeder and the Navy would be justified, even though, of course, an untruthful newspaper article is no crime. Consequently, the accusation brought by the Prosecution is only made for the purpose of deprecating Raeder's personality in contradiction to the life-long esteem which Raeder has enjoyed in the whole world and especially abroad.

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* dated 23 October 1939 and entitled: "Churchill sinks the "Athenia"."

I think the evidence has sufficiently revealed that the statement of facts presented by the Prosecution is not correct. Surely this must be our conclusion if the Prosecution believed at first that the odious article in the "Voelkischer Beobachter" could not have appeared without the knowledge of the Naval Command.

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The Prosecution believed this because, in view of their conspiracy complex, they think there was permanent intelligance and close cooperation between the various departments in every case. The course of the Trial has shown how little this assumption is correct. The opposition between the individual departments and especially between the Navy and Propaganda Ministry, between Raeder and Goebbels was far greater than the opposition between individual departments in a democratic State. Consequently, the testimonies of witnesses Raeder, Schulte-Moenting, Weizsaecker and Fritsche, together with the documents, establish the following facts absolutely clearly:

1. In early September 1939 Raeder himself firmly believed that the sinking was not imputable to a German U-Boat because it was revealed by the reports that the nearest German U-Boat was at least 75 nautical miles away from the spot of the sinking.

2. Accordingly, Raeder, as stated in Document D 912, published a "bona fide" denial, and issued declarations to this effect to the American Naval Attache' and to the German Secretary of State Baron Weizsaecker.

3. Raeder did not realize the mistake until after the return of the U 30 on the 27 September 1939.

4. Hitler insisted, as evidenced by witnesses Raeder and Schulte-Moenting, that no rectification of the facts should be made to any other German or foreign department, that is to say, that the sinking should not be acknowledged as caused by a German U-Boat.

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He apparently yielded to the impulse of political considerations and wished to avoid complications with the USA over an incident which could not be remedied, however regrettable it was.

5. Fritsche disclosed that after the first investigation by the Navy in early September 1939, he made no further investigation and that the "Voelkischer Beobachter" article appeared as a consequence of a complete agreement between Hitler and Goebbels, without previous notice to Raeder. On this point the testimonies of Raeder and Schulte-Moenting coincide. It is consequently clear that Raeder - in contradiction to the claim of the Prosecution-was not the author of the article and moreover had heard nothing about the article before its appearance. I regret that, in spite of this clarification, the Prosecution apparently are intent upon persisting in their claim by the production, on the 3 July 1946, of a new document D 912. This newly submitted Document contains only radio broadcasts by the Propaganda Ministry which are of the same kind as the "Voelkischer Beobachter" article. These radio broadcasts were a propaganda instrument of Goebbels and cannot, any more than the article, be brought up as a charge against Raeder, who, in fact, was at the time informed of the article only and not of the radio broadcasts. Even the fact that Raeder did not attempt any rectification after being informed of the article, cannot be made a moral charge against him since he was bound by Hitler's order and had

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no idea at the time that Hitler himself had a hand in the article which Weizsäcker aptly described as perverse phantasy.

I venture, in this connection, to remind the Tribunal that it is a notorious fact that precisely at the beginning of the war, inaccurate reports also appeared in the English press about alleged German atrocities which even after this clarification were not rectified, as for instance, the false report about the murder of 10,000 Czechs in Prague by German elements in September 1939, although the matter had been cleared by a commission of neutral journalists.

The Prosecution believe they possess overwhelming material against all the defendants. If this presumption were correct with reference to Raeder, the Prosecution would scarcely have felt the necessity of bringing forward precisely this "Athenia" case in such ponderous and injurious terms, with the sole purpose of discrediting the former Commander-in-chief of the German Navy.

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V.

Concerning Greece the Prosecution makes accusation against RAEDER of violation of neutrality and breach of international law, namely:

GB 226 1. on the basis of document C 12, according to which HITLER decided on the basis of a report by RAEDER on 30 December 1939 that:

> "Greek merchant ships in the zone around England which the USA declared prohibited are to be treated like enemy ships."

GB 122 2. According to document C 167 on the occasion of delivery of a report to HITLER on 18 March 1941, RAEDER asked for confirmation that "all of Greece is to be occupied, even in case of peaceful settlement".

In the course of the trial both accusations have turned out to be without support; in both cases there is no action which violated international law.

Ad 1. RAEDER and the German naval command learned in October/ November 1939 that quite a number of Greek merchant ships had been put at the disposal of England, either at the instance or with the approval of the Greek government.*) This fact cannot be reconciled with strict neutrality and, according to principles of international law, it gave Germany the right to take an equivalent counter measure. This justified counter measure consisted in treating Greek ships,

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*) see RAEDER Exhibit No. 53 and 54, document book III, page 258 ff.

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which sailed for England, as enemy ships from the moment they were in the zone around England which had been declared prohibited by the United States.*)

Ad.2. Germany, especially the High Command of the Navy, had received reports that certain Greek military and political circles maintained the closest connections to the Allied General Staff ever since 1939.
In time there had been more and more reports. What the Allies were planning on the Balkans is known; the intentions were the erection of a Balkan front against Germany. For this purpose local conditions in Greece, as well as in Rumania, were examined on the part of the Allied General Staff of the Allied officers, in order to build airplane bases there. Furthermore preparations were made to land in Greece.
As proof I have presented as RAEDER Exhibit No. 59 **) the minutes for the session of the French war committee of 26 April 1940, which shows that the war committee at that time had already checked the question of possible operations in the Caucasus area and on the Balkans, from which results the activity of General JAUNEAUD in Greece for the continuation of investigations and preparati and the attempt to camouflage the trip by making it in civilian clothing.***)

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*) concerning it see also the testimony of RAEDER, German transcript, page 9720, and SCHULTE - MOENTING, same transcript, page 10, 011;

**) RAEDER document book II, page 276;

***) see testimony of SCHULTE- MOENTING, page 10, 011 and RAEDER Exhibit No. 63, document Book III, page 285.

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This attitude of Greece and especially her agreement with Allied plans represents a violation of neutrality on the part of Greece; for Greece did not appear as England's ally, but formally continued to maintain her neutrality. Therefore Greece could no longer figure that Germany would fully respect Greek neutrality. Germany nevertheless respected Greek neutrality for a long time to come. The occupation of Greece took place in April 1941 only after British troops had already landed in Southern Greece on 3 March 1941. *)

The fact that Greece agreed to the English landing is, according to generally recognized rules, without importance in international legal relations and for the international legal decision between Germany and England and between Germany and Greece; it has importance only for the legal relations between England and Greece.

The British Prosecution tried to justify the occupation of Greece with the fact that Greek neutrality was menaced by Germany, especially by the occupation of Bulgaria on 1 March 1941. Herein the Prosecution is overlooking that not only the execution of the occupation of Greece by British forces, but also the planning of the Allies started essentially earlier than the German planning. But however that may be, no accusation, at all, can be raised against RAEDER;

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*) see German transcript, pages 912 and 668.

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GB 122 because the date of document C 137 submitted by the Prosecution is 18 March 1941, which means it is 14 days later than the landing of the English in Southern Greece. In any case, at that time Greece could no longer demand that her alleged neutrality be respected. But beyond that the accusation is also unjustified, when the Prosecution points out that RAEDER asks for confirmation for all of Greece to be occupied. This question of RAEDER / was not a causal factor for the fact , that all of Greece was occupied: for HITLER had provided already

GB 13 in his order No.20 of 13 December 1940 - 1541 PS - that the entire Greek continent was to be occupied, in order to frustrate English intentions of creating a dangerous basis for air operations under the protection of a Balkan front, especially for the Rumanian oil district. In addition to that the inquiry of RAEDER on 18 March 1941 was justified on strategic grounds, because Greece offered many landing possibilities for the English, and the only possible defense was for Greece to be firmly in the hands of Germany, as witnesses RAEDER and SCHULTE-MOENTING have explained.*)

This strategic idea of RAEDER had nothing to do with plans of conquest or desire for glory, as the Prosecution thinks; /the navy won no glory whatsoever in Greece because the occupation was a land operation, and the occupation of an originally neutral country for

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*) German transcript, pages 9,722 and 10,011.

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is simply the regrettable consequence of such a big war; it cannot be charged to <u>one</u> belligerent,, if both belligerents had plans concerning the same state and carried out these plans.

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VI.

I should like now to go on to the subject of Norway. On 9 April 1940, troops of all 3 sections of the German Armed Forces occupied Norway and Denmark. From this and the preceding plans, the Prosecution have drawn up the most grave accusation against Grand Admiral RAEDER, alongside, I understand, with the collective charge of participation in a conspiracy.

The British Prosecutor has pointed out that is was RAEDER who first suggested the occupation of Norway, to HITLER and believes that RAEDER accomplished the occupation out of a spirit of conquest and vainglory. I propose to demonstrate that this argumentation is incorrect. Only one thing is correct, that is, that in this single instance READER took the initiative of first approaching HITLER on the subject of Norway, namely, on the 10 October 1939. I shall, however, show that he has in fact acted not as a politician but enclusively as a soldier. RAEDER sensed purely strategic dangers, and pointed out these strategic dangers to HITLER, because he assumed that the Allies contemplated the establishment of a new front in Scandinavia, in Norway in particular, and knew that an occupation of Norway by England could have a militarily decisive consequence to the detriment of Germany. I shall show that Germany has committed no violation of international law by the occupation of Norway. Before I state the juridical foundation and connect the facts established by the appraisal of evidence with the principles of international law, I should like first to state an important fact:

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It is very reluctantly that RAEDER acted as Commander-in-Chief of the German Navy in the Norway action, as is disclosed by his own and SCHULTE-MOENTING's interrogations. RAEDER had the natural feeling of justice that a neutral state could not be drawn into the existing war without an absolutely imperative emergency. In the period between October 1939 and Spring 1940, RAEDER had always defended the opinion that by far the best solution would be that Norway and all Scandinavia remain absolutely neutral. This, RAEDER and SCHULTE-MOENTING disclosed unanimously at their interrogation, and it is, moreover, proved by documents. For this, I refer to RAEDER Exhibit No. 69 *). In this, the conviction of RAEDER that the most favourable solution is undoubtedly the preservation of the strictest neutrality by Norway, is entered in the War Diary on 13 January 1940. RAEDER had clearly convinced himself that an occupation of Norway by Germany for motives of international justice or strategy could only be conceivable if Norway could not or would not maintain an absolute neutrality.

The Prosecution has referred to the treaties between
GB 79 Germany and Norway, in particular to Document TC 31 in which the German Government, on 2 September 1939 expressly assures Norway of her inviolabity and integrity. In this memorandum, the following legitimate remark is added:

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*) RAEDER Doc. Book IV, Pages 317 and following.

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"If the Reich Cabinet makes this declaration it, of course, also expects that Norway, in turn, will observe irreproachable neutrality towards the Reich, and that it will not tolerate breaches of Norwegian neutrality should attempts along that line be made by third parties."

If despite this fundamental attitude, Germany yet decided to occupy Norway, this was done because of the threat that the plans of the Allies created the danger of occupation of Norwegian bases by them. In his opening speech *) Sir Hartley SHAWCROSS declared that according to the indictment, Germany's breach of neutrality and its war of aggression against Norway remained criminal, even if Allied plans for occupation had been correct; and he added that in reality such plans were not true. I believe that the argument advanced here by Sir Hartley SHAWCROSS is contrary to accepted International Law. If Allied plans for the occupation of Norwegian bases existed, and there were danger that Norway neither would nor could maintain strict neutrality, in such a case accepted standards of International Law did justify Germany's Norway campaign.

I may first revert to the juridical angle, according to accepted standards of International Law, in order to create a foundation for my own reasoning, while I shall at the same time try to set forth the legal viewpoints which contradict the Prosecution's interpretation. In order to save time in this legal exposition, and in order to make the conception comprehensible

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*) German language transcript, page 657

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I have submitted as RAEDER Exhibit No. 66 *) an opinion on International Law on the Norway Campaign by Dr. Hermann MOSLER, a Professor of International Law at the University of Bonn. The High Tribunal will bear in mind that I was given permission to make use of this opinion for purposes of argumentation and I may therefore refer at this point to this detailed scientific compilatio and argument. In my final pleading I shall confine myself to a summary of the most essential concepts of legal opinion.

Articles 1 and 2 of the Hague Convention on Rights and Obligations of Neutrals in the event of Warfare at Sea**) stipulate that "the parties at war are bound to respect the rights of sovereignty of neutral powers in the territory and coastal waters of the neutral power", and that all unfriendly acts on the part of the belligerent parties within the delimitation of the coastal waters of a neutral power "are strictly banned as violations of neutrality." Contrary to these stipulations, Great Britain violated Norway's neutrality through the laying of mines in Norwegian coastal waters for the purpose of obstructing the legitimate passage of German warships and merchantmen, especially in order to cut off the exportation of iron ore from Narvik to Germany. In the letter of the Foreign Office which I received in reply to my petition for authorization to submit files of the British Admiralty, confirmation as per RAEDER Exhibit No. 130 was received to the effect that His Majesty's forces laid mine fields in Norwegian waters,

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*) Document Book RAEDER IV, page 291 and following pages
**) RAEDER Exhibit No. 65 document book IV, page 290.

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and in addition it was stated that this was a well known fact. *)

It should be an uncontested fact that thereupon Germany was justified in reestablishing the disturbed equilibrium between the belligerent parties, in other words in wresting from the enemy's forces the benefit they were deriving from violation of neutrality.

Reaction against such violation of neutrality is primarily directed against the adversary and not against the neutral party. Legal relationship deriving from neutrality exists not only between the neutral party and the two belligerent parties, but the neutrality of the respective neutral State is at the same time a factor in direct relations existing between the belligerent parties. If the relationship of neutrality between one of the belligerent parties and the neutral power suffers disturbance, the neutral Power can in no way file complaint if the other belligerent Power take appropriate action, in which case it is entirely immaterial whether the neutral State is unable or unwilling to protect its neutrality. **)

The legal title under which the prejudiced belligerent Power can proceed to counter measures is/the "Recht der Selbsterhaltung" ("the right of self-preservation" ; "le droit de preservation personell

As brought out in detail by legal opinion, this right of self-preservation is generally accepted by International Law.

It may suffice to

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refer to document-book Raeder, volume V, page 382 and following pages

Raeder Exhibit No.83, draft of resolution of the 6th meeting of the Supreme Council of 28 March 1940,
No. 84, Reynaud to Chamberlair
No. 90, Angle-French Note verbale to Norway on laying of mines
(volume V, page 402)

**) refer to opinion Mosler, volume IV, page 294, 298 and 299, also to Wheaton, Verdross, Kunz, Fauchille and Oppenheim-Lauterpacht, mentioned therein.

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point out here that this basic law is not affected by the Kellogg Pact so often mentioned in this Court. I may therefore also ask permission for a brief quotation from the circularised memorandum of the American Secretary of State Kellogg dated 23 June 1938, as follows:

> "There is nothing in the American draft on an anti-war treaty which restricts or impairs the right of self-preservation in any manner. That right is inherent in every Sovereign State and is implicit in every treaty."

Justice Jackson will permit me to mention that he himself, in his opening speech of 21 November 1945, referred to "the right of legitimate self-preservation."

It is interesting that in his address before the Parliament, on 8 February 1940, the Swedish Foreign Minister Guenther recognized this idea, although he protected the interests of one of the belligerents and although this speech was made before Germany proceeded to retaliatory measures in Norway.*) In that address Guenther took the attitude to the English declaration that Sweden's neutrality would be respected so long only as it would be respected by England's enemies. Guenther took cognizance of the fact that Sweden, in its relationship with England, would lose its neutrality should Germany violate Sweden's neutrality and should Sweden not be willing or able to prevent such violation of neutrality through Germany. Consequently,

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*) Mosler Opinion, document book RAEDER IV, page 295

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so said Guenther, Great Britain would no longer be held to treat Sweden as a neutral country. It is clear that the conclusions drawn by Guenther in the event of a breach of neutrality through Germany must also apply to the tri-partite legal relationship between Great Britain - Germany - Norway. The real aim, however, and this I shall set forth in my presentation of evidence. was not Great Britain's mining actions in Norwegian coastal waters, but a much further-reaching Anglo-French scheme aiming at the occupation of Norwegian bases and of a portion of the Norwegian home territory. The mining action enters into the picture merely as a part of the total plan.

According to Mosler's opinion and in the light of the above remarks, it is absolutely certain that Germany was justified in occupying Norway had the Allies carried part of their plan into effect by landing at a Norwegian base before German troops made their appearance. This, however, did not occur; Rather, as I will show, the situation was that Germany anticipated an Anglo-French landing, in other words decided for counter-measures on account of the imminent danger which threatened.

Legally a second question should also be investigated: Assuming the same conditions, are counter-measures not permitted until after the other belligerent has proceeded to violate neutrality, or is reaction permitted in the presence of the imminently threatening violation of neutrality in order to anticipate the enemy's attack?

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According to the findings composed by Dr. MOSLER the preventive counter-measure is permissible, and the directly impending violation of neutrality which can be expected with certainty, is to be considered equal to a completed violation of neutrality. *)

The well-known Anglo-Saxon specialist on international law, WESTLAKE, states to the question of the preventive measure:

"Such a case in its character resembles that one, that a belligerent has the certain knowledge that his opponent, in order to gain a strategic advantage, is just about to have an army march through the territory of a neutral who is apparently too weak to resist; under these circumstances it would be impossible to refuse him the right to carry out the attack on the neutral territory first." **)

The justification for such a preventive measure, according to WESTLAKE lies in the right for self preservation, which also applies against a threatening violation of neutrality. Another concept would also have been not true to life and would not correspond to the character of the society of nations as a majority of sovereign states with an as yet incompletely developed common law code. In the inner-state law system of every civilized country, the repulsing of an immediately threatening attack is a permissible defense act, although there even the help of the state against the law-breaker is furnished. In the society of internaitonal law, where this was not the case, anyway not at the beginning

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*) Findings of Mosler, Document Book IV, Page 299-302

**) Westlake under paragraph 22, ebenda, Page 300

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ginning and during the 2nd World War, the viewpoint of self-preservation must apply to an unequally stronger extent. In conjunction with this concept, the British government during this war also considered the preventive measure as justified, when it occupied Iceland on 10 May 1940. The British government has justified this measure clearly and correctly in accordance with internation law in an official announcement of the Foreign Office, as follows:

"After the German occupation of Denmark it is has become necessary to count on the possibility of a sudden German advance to Iceland. It is clear, that the Icelandic government, in view of such and attack, even if it was only carried out with very small forces, would be unable to prevent its country from falling into the hands of the Germans completely.

The preventive measure was carried out, although Iceland expressly defended herself in a note of protest against the occupation.

I also ask to note that the United States agreed with this standpoint of law, as is proven by the well-known message of the President of the United States to Congress of 7 July 1941, and the subsequent occupation of Iceland through armed forces of the American Navy.

In accordance with these basic principles of law, the charge at hand must be examined. I have tried to clarify the charge in the presentation of evidence, and may I summarize the major viewpoints which actually showed a closely impending violation of neutrality on the part of the Allies through

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the partial occupation of Norway, and thereby justified the German action against Norway.

At the end of September early October 1939, Grand Admiral RAEDER, as the presentation of evidence has shown, received various information through the current reports of Admiral CANARIS as director of intelligence, and through General Admiral CARLS, which let the danger be recognized, that the Allies, in accordance with their plans to encircle Germany, would occupy bases in Norway, in order to halt in particular the imports of ore from Scandinavia.

English airplane-crews camouflaged in civilian clothing were seen in Oslo, and survey works by Allied officers on Norwegian bridges, viaducts, and tunnels up to the Swedish border were identified. Furthermore, the quiet mobilization of Swedish troops because of the endangerment of Swedish ore-territories had become known. RAEDER was justified in considering himself obligated to report this state of facts to HITLER and to point out the danger to him which would arise for Germany, if English and French armed forces were actually to fortify themselves in Scandinavia. The dangers were clear. They consisted of the cutting-off of all imports from the industrial areas of Scandinavia, in particular of the ore-imports, as well as in the fact, that the Allied obtained a favorable base for air attacks, and last not least in the fact, that the German Navy was threatened in its flank and its operational potentialities were limited. *)

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*) see testimony of SCHULTE-MOENTING, minutes of the session of the morning of 22 May 1946, RAEDER, page 9722 ff. of 17 May, afternoon.

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The blockade of the North Sea and Baltic would have had strategically disastrous consequences.

As the information did not yet offer a final over-all picture, RAEDER did not suggest immediate occupation, but only pointed out the dangers in order to wait for further developments for the time being. HITLER therefor also did not make a final decision during this discussion of 10 Oct. 1939 but agreed to wait. Similar information was received during the months of October and November and now also by the Naval attache Lieutenant Commande SCHREIBER who had in the meantime been sent to Oslo, to whose Affidavit (RAEDER Exhibit No. 107, Vol. VI, page 464 ff) I refer. The Norwegian shipping association had made tanker tonnage of about 1 million tons available to England with the consent of the Norwegian Government (see also RAEDER Exhibit No. 86, War diary of 6 April 1940, according to which 90% of the Norwegian tankers had been put at the disposal of Englar

In Winter 1939/40, the information concerning espionage missions of the English and French Secret Service to Norwegian agents and English harbor consulates for the purpose of reconnoitering landing opportunities and examination of Norwegian Railroads with regard to their capacity, particularly the Narvik line and missions concerning information about land and sea airports in Norway took more definite form. By reason of the fact that the information from 2 different sources, namely the Naval Attache Oslo and Admiral CANARIS, corresponded and became gradually more extensive during the months of October to December 1939, the reported danger seemed to increase slowly all the time.

In addition, in December 1939 QUISLING and HAGELIN, sent to ROSENBERG - entirely independent of the sources of information which had existed up to that time - the same or similar information concerning the landing intention of the Allies, and not directly to RAEDER, for the only reason that RAEDER didn't know either QUISLING or HAGELIN at that time. As the question involved was a purely military-strategic one, ROSENBERG asked RAEDER to discuss things with QUISLING so that RAEDER could examine the military technical possibilities, in consideration of the fact that an aggression by the Allies in Scandinavia must be expected according to the information received, This is evident from the letter of ROSENBERG to RAEDER of 13 December 1939, which I submitted as RAEDER Exhibit No. 67 (Doc.book RAEDER IV, Page 309). RAEDER now considered it his duty from the purely military point of view to inform HITLER, with whom he had not discussed this question in the meantime, that corresponding information had meanwhile been received from CAN. the Naval Attaché in Oslo and QUISLING. HITLER wished to speak personally with QUISLING, which he did, and decided then to make the necessary preparations for a possible preventive measure to counter the danger threatening, namely the occupation of Norway (see C 64 - G B 86 of 12 Dec. 1939, where it is pointed out that the danger of the occupation of Norway by England was very threatening, and that Norway must not fall into the hands of England, as this could be of great importance to the course of the war).

The final decision was still deferred, and information as to what further news would be received and whether the danger increased was awaited

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This caution and delay seems particularly understandable in the case of RAEDER. As I have already remarked, RAEDER would have preferred if the strict neutrality of Norway had been maintained, especially as he was against every conquest just for the sake of conquest. He knew on the ot hand that an occupation required the commitment of the whole Navy, thus i volving the fate of the entire Navy, and that the loss of at least a thir of the fleet had to be reckoned with. It should be clear without furth ado how hard, from such political and strategic view-points, such a decis was for a conscientious man and soldier.

There was more news unfortunately during the first months of the year 1940 and always more definite. In March 1940 surprisingly many English speaking persons could be seen in Oslo, and RAEDER received very serious information, worth of credit, about shortly impending measures by the Alli against Norway and also Sweden. As far as landing intentions were concerne Narvik, Drontheim and Stavanger were mentioned. Thus it came about that the military planning only took place in February and March, and that the final instructions were issued to the Wehrmacht even as late as March 1940. (See testimony SCHULTE-MOENTING of 22 May 1946 in the morning, sess transcript, page 10 002).

There were also numerous violations of neutrality in March 1940, whi have been collected in the war diary (RAEDER Exhibit No. 81, Doc.book V, page 372 et seq., see also further entries in the war diary of 27 March 19 RAEDER Exhibit No. 82, same place, page 377 et seq.), and also the mine laying in Norwegian territorial waters at the beginning of April.

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The Prosecution has delivered only a few documents against this comprehensive information material, according to which the German Ambassador in Oslo, BRAEUER, did not regard the danger so great, but believed that the English attitude, mentioned also by him, pointed merely to provocation of Germany, in order that Germany might give cause for war operations in Norwegian waters. *)

Baron WEIZSAECKER's point of view in cross examination was that at first he did not consider the danger so great, but admitted that later on the facts proved that he and BRAEUER were wrong, but RAEDER on the contrary was right in his apprehension.

This objective accuracy of the conception of Grand Admiral RAEDER and of the information which was the basis of his conception, is shown from separate documents submitted by me and accepted by the Court.

Since 16 January 1940, the French High Command had been working on a plan which had in view, amongst others things, the occupation of harbours and flying fields on the West Coast of Norway. The plan contemplated in addition that the operations should possibly be extended to Sweden and the mines of Gaellivare be occupied. **) Efforts have been made to justify this plan by stating that it was elaborated solely to help Finland against the Soviet Union. To begin with

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*) see documents D 843-GB 466, D 844 - GB 467, D 845-GB 486.

**) RAEDER Exhibit No. 79, Doc. Book IV, pages 360/61.

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it could be objected that an action in support of Finland does not justify any occupation of Norwegian territory. Moreover the documents show that it was not a question of only altruistic measures in favour of Finland. During the interallied military conferences on 31 January and 1 February which preceeded the meeting of the supreme Council on 5 February, the question of direct help for Finland was relegated by the English to the second place; they showed themselves to be determined adherents of an enterprise against the mines of Northern Sweden. This is confirmed by General GAMELIN in a note of 10 March 1940 *) and he adds that this opinion obtained the majority vote in the supreme Council, and that the preparation of the Scandinavian Expedition should be started immediately. And so it came about that the Franco-British fighting forces had been ready for transportation since the first days of March, whereby, according to GAMELIN, the leadership of the proposed operations in Scandinavia was transferred to the British High Command. GAMELIN adds finally **) that the Scandinavian plans must be resolutely pursued further, in order to save Finland"or at least to lay hands on the Swedish ores and the Northern harbours".

Lord HALIFAX informed the Norwegian Ambassador on 7 February that England wished to obtain certain bases on the Norwegian coast in order to stop the German transport of ore from Narvik.***)

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*)RAEDER Exhibit No 79

**)RAEDER Exhibit No 79, page 369

***)RAEDER Exhibit No 79, Doc.book V, page 428.

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In mid-February, English and French general Staff officers visited landing places in agreement with the Norwegian authorities. *)

According to a report of the Embassy in Stockholm, dated 16 February 1940, the English intention in this respect was to land troops simultaneou in Bergen, Drontheim and Narvik. **)

On the 21 February 1940, Daladier communicates to the French Ambassador in London, Corbin, that the occupation of the most important Norwegian ports and the landing of the 1st Division of the Allied Fighting Forces in Norway would give Sweden a feeling of security, and goes on to s that this operation must be planned and executed at shortest notice, "independantly of Finland's call for assistance". In the event of this "demarche" in Norway meeting with refusal, which was likely, the British Government was to confirm the Norwegian refusal and immediately seize control of the bases it needed for the safeguarding of its interests, and was to do so in the form of a "surprise operation". Whether Sweden refuses the passage through to Finland does not appear important; what is emphasized is rather the "advantage of having secured a dominating positio against Germany in the North, interrupted the sea transport of Swedish ore and brought the Swedish ore districts within the radius of action of our aviation ***)

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*) RAEDER Exhibit No. 97

**) RAEDER Exhibit No. 71, Vol. IV, Pages 340/41

***) RAEDER Exhibit No. 77, Vol. IV, Pages 352 et seq.

See also RAEDER Exhibit No. 80, Vo. IV, Pages 369 et seq. Report by the Commissione of the Inter-Allied Research Committee for Scandinavia on negotiations dated 11 March 1940, a top secret report bearing upon the "Landing in Narvik".

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On the 27 February 1940, CHURCHILL declared in the British House of Commons that he was "tired of considering the rights of Neutrals." *)

It is interesting to note that unanimity is achieved in the 6th session of the Supreme Council on the 28 March 1940: **)

"Every attempt of the Soviet Government to obtain from Norway a position on the Atlantic coast runs counter to the vital interests of the Allies and would elicit due counter-measures."

The conception thus defended by the Supreme Council with reference to the vital interests of the Allies, coincides exactly with the legitimate notions of "right of self-preservation" presented by me and is in complete contradiction to the interpretation of International Law propounded in this respect by the Prosecution.

The ultimate execution of the operation in Norway, that is, the landing and the constitution of bases, was decided on the 28 March 1940 between the authoritative British and French departments. This date was indicated at a session of the French War Committee by the French Prime Minister, ***) and General GAMELIN added that he had on the 29 March, impressed upon General IRONSIDE the necessity of having everything ready for a swift occupation of the Norwegian ports; he said he had also informed Mr. CHURCHILL to the same effect on the occasion of a visit to Paris.

On the 30 March, CHURCHILL declares on the Radio:

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*) RAEDER Exhibit No. 97, Doc. Book V Page 425

**) RAEDER Exhibit No. 83, Doc. Book V Pages 379 et seg.

***) RAEDER Exhibit No. 59, Doc. Book III Page 275.

RAEDER

"It would not be fair if, in the fight for life or death, the Western Powers adhered to legal agreements." *

On 2 April 1940 at 19:12 o'clock, London notified Paris by telegram that the first transport was "to sail on J. 1 day" and that J. 1 day was in principle 5 April.**

On 5 April Earl De La Warr established that neither Germany nor the Neutrals could be certain that "England would allow her hands to be tied behind her back while following the letter of the law." ***

The English Minister of Labor Ernest Brown declared on 6 April 1940 that neither Germany nor the neutrals could be certain that the Western Powers would adhere to the letters of International Law.****

On the same day - this was one day after the laying of mines in Norwegian territorial waters - a secret English operational order was given "concerning preparations for the occupation of the northern Swedish ore fields outside Narvik."

In this order it was decided that the task of Avonforce consisted first of all in "securing the port of Narvik and the railroad to the Swedish border." It was added that it was the intention of the Commander-in-Chief to advance into Sweden and to occupy the Gaellivare ore fields and important points of that territory as such as an opportunity occurred, a formulation, which

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*) Raeder exhibit No. 97, document book V, page 424

**) Raeder exhibit No. 85, document book V, page 386, General Lelong to General Gamelin

***) Raeder exhibit No. 97, document book V, page 424

****) Raeder exhibit No. 88, document book V, page 392

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almost reminds one of the words in prosecution document L-79: "to attack Poland at the first appropriate opportunity."

The original plan to send the first transport to Norway on the 5 April was altered; for on the evening of the 5 April, the British High Command informs the Commander-in-Chief of the French Navy that "the first English convoy could set out before the 8 April which, within the framework of the established time schedule, means that the first French Division is to leave the embarkation port on the 16 April". *)

To complete the story, let it be pointed out that the Norwegian operation was designated by the allies by the camouflage name of "Stratford-Pl meaning the action, while the German Norwegian operation was referred to by the camouflage name of "Weser Exercise" (Weseruebung).

The preceding facts show that:

Since Autumn 1939, preparations for eventual action in Norway were made by the studying of landing possibilities. Since January/February 1940 the danger of an occupation of bases in Norway by the Allies was threatenin In March 1940, the execution of the Schema was ultimately decided upon and the departure of the first convoy scheduled for the 5 April. Simultaneo ly, mine-laying was carried out in the Norwegian territorial waters and troops were at the same time concentrated in British and French ports for the Norwegian operation. Thus,

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*) RAEDER Exhibit No. 91, Doc. Book V Page 409, Commander-in-Chief of the French Navy to Daladier

**) RAEDER Exhibit No. 98 Doc. Book V Page 430.

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factual illegality in the form of imminent neutrality violations existed from the point of view of International Law, and neutrality violation had indeed been already committed to a certain extent (mine-laying). This was the point where Germany, in accordance with the international notion of the right of self-preservation, was entitled to resort to equivalent measures, that is, to occupy Norway and prevent the threatened occupation by other belligerent States. It was, in fact, as who shown later, the last moment; for Germany frustrated the allies, only because the British High Command had postponed the departure of the first convoy, originally scheduled for the 5 April. The German operation in Norway must therefore be considered as legitimate according to the principles of International Law. I have the firm convicti n that the High Court, in view of the circumstances just exposed in relation to existing International Law, will conclude that Grand Admiral RAEDER has, with regard to the occupation of Norway, acted from purely strategic points of view, in due consideration of international legal standards and accordingly acquit him of the charge made by the Prosecution.

With reference to Norway, the Prosecution has moreover charged against RAEDER and incidently against DOENITZ that a violation of International Law is entailed by the fact that according to an order dated 30 March 1940, the Naval Forces were, until the landing of troops, to fly the English flag. *)

This too is an error of the Prosecution as regards International Law for sea warfare. The Hague regulation on land warfare does expressly forbid the abusive flying of flags. But in see warfare the answer to this question, according to the prevailing International Law, is definitely

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*) see C 151 - GB 91 and C 115 - GB 90.

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that, until hostilities begin, ships may sail with their own, or with enemy or neutral flags or even with no flags at all. I take the liberty, in this respect, of availing myself of Dr. Mosler's juridical treatment of the question in his judgement appearing under item 7 *) and in particular of his references to scientific literature on the subject, according to which the use of a foreign flag is universally considered as a legitimate war deception and is/especially allowed condoned by British practice, this in accordance with the historical precedent when Nelson, in the Napoleonic wars, flew the French flag off Barcelona to lure the Spanish ships.

This dispute is however superfluous in the present case because actually the order just mentioned, instructing the flying of the English flag was according to documentary evidence **) / cancelled on the 8 April, that is to say, prior to the execution of the Norway operation.

In conclusion, I only wish to emphasize with reference to the subject of Norway, that after the occupation of Norway, Raeder and the Navy did everything they could to give a friendly character to the relations with Norway and to treat the country and the people honorably and well during the occupation, and to spare them every unnecessary burden. Raeder and the Admiral Commanding in Norwegian waters General Admiral Boehm, have moreover endeavoured to conclude a peace with Norway guaranteeing Norwegian national interests. Their efforts were frustrated by the institution by Hitler and Himmler

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*) Raeder Exhibit No 66 Doc. Book IV Pages 304/6

**) Raeder Exhibit No 89 Doc. Book V Page 400.

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of a so-called civil administration by the Reich Commissioner TERBOVEN *), which unlike the Wehrmacht was connected with the Party, the SS, SD and Gestapo. As confirmed by BOEHM in his affidavit, RAEDER repeatedly intervened with HITLER in favor of the ideas he shared with the Admiral in Command in Norwegian waters for good treatment of the Norwegian people and an early conclusion of peace and, together with BOEHM, set himself with the utmost vigour against TERBOVEN. Again, the tragic event is repeated here that the Wehrmacht, despite its utmost efforts, has neither been able to oppose HITLER's dictature nor the dictature exercised to HITLER's knowledge by such a mediocre Reich Commissioner as TERBOVEN. The Norwegian people who had to suffer under the occupation know - and this is the only gratification for RAEDER - that the Navy was not the cause of these sufferings. On the other hand, it is interesting to know that the differences which cropped up between HITLER and RAEDER with reference to Norway are precisely one of the chief motives which caused RAEDER to ultimately insist upon his resignation. Other motives were that RAEDER also had differences with HITLER, with reference to France, because here again RAEDER urged the conclusion of peace, while HITLER with his excessive character was opposed to conciliatory steps of this kind in occupied countries. **) RAEDER also had differences with HITLER with reference to Russia, because he was in favour of observance of the German-Russian treaty and declared against the breach of the Treaty and against war with Russia.

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*) See SCHREIBER Affidavit, RAEDER Exhibit No. 107, Doc. Book Pages 468/72,
BOEHM-Affidavit, RAEDER Exhibit No. 129, Doc. Book VI,
Testimony RAEDER 17 May 1946 afternoon, Transcript Pages 9743 et seq.

**) Testimony SCHULTE-MOENTING on 22 May forenoon Page 10 003,
Testimony RAEDER 17 May afternoon Page 9745.

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VII.

I now come to the charge of the Prosecution with regard to a war of aggression against Russia. The charge of the Prosecution on this subject cannot be very well understood. It dealt with land warfare, so that the Navy did not have to meet any preparations, with the exception of the few preparations in the Baltic Sea. The Prosecution itself has furthermore stated that RAEDER had been opposed to the war against Russia. The only thing which could remain from the charge of the Prosecution is its claim *) that RAEDER had fundamentally been in favor of the war against Russia also and had only been opposed to
US 136 HITLER with regard to the time factor. With reference to C 170 the Prosecution states that RAEDER had only recommended the postponement of the war against Russia until the time after the victory over England. According to Document C 170 this actually could appear this way. In reality, however, the case is different, and the true state of affairs has been cleared up by the detailed presentation of evidence. The witness Admiral SCHULTE-MOENTING **) has clearly stated, without being contradicted in the cross-examination, the RAEDER not only raised objections with regard to time limits, but that he fundamentally argued with HITLER against a campaign against Russia, and that because of moral reasons and reasons of international law; just because he was of the opinion that the non-aggression pact with Russia, as well as also the trade agreement would have to be observed under all circumstances. The Navy was especially interested in

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*) see Admiral WAGNER's testimony of 13 May, afternoon session, Page 9410

**) see Admiral SCHULTE- MOENTING's testimony, Page 10 007 ff.

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the delivery agreements with Russia, and has always tried to closely observe the treaties. Besides this basic principle of observing treaties, i.e. besides this general reason, RAEDER represented the opinion that a war against Russia would also be false from the strategical standpoint. His own testimony and that of Schilte-Moenting show that in September, November, and December of 1940 RAEDER tried again and again with Hitler to dissuade him from the thought of a war against Russia. It is correct, that in Document C 170 only the strategical justification for his oppostion has been recorded. However, this is not at all surprising, because in the papers with the Naval Operations Staff naturally only justifications were recorded, which were of naval technical and strategic importance, but not political reasons. I have already shown that Hitler fundamentally did not permit, that RAEDER as Commander-in-Chief of the Navy intervene in foreign-political questions, i.e. in things, which did not belong in his department. If RAEDER did once try this, contrary to the will of Hitler, and that in cases of special importance, then he could do it only under four eyes and accordingly could not then record these conversations in the war diary; however, he has always told everything to his chief of staff as his closest confidant. As the result of this, Schulte-Moenting could confirm clearly that RAEDER in this case opposed Hitler because of moral misgivings, als with regard to international law and furthermore also employed strategical reasons in the hope of being able to influence Hitler sooner in this manner, Schulte-Moenting even stated -- just like RAEDER -- that in November/the latter had gained the impression after a

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discussion, that he had dissuaded HITLER from his plans. I believe, that this has clarified the matter, and only the tragical factor remains here also, that HITLER paid just as little attention to RAEDER in regard to political objections to Russia also, as in regard to Norway and France.

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VIII.

A similar fact is the reproach the Prosecution referring to the war of aggression against U.S.A and the violation of the Neutrality of Brazil. As both these reproaches are sufficiently refuted within the framework of the evidence, I am only going to discuss them briefly.

According to the statement of the Prosecution, RAEDER somehow collaborated in the plan to induce Japan to attack America. As a matter of fact no naval strategic conferences were held between Japan and RAEDER. RAEDER was always of the firm conviction that a war against the USA must be prevented just as much as one against Russia. This perception is also understandable, because, furthermore, it had always been his opinion that HITLER should never be allowed to start a war against England. Since the war against England had now come about, it was RAEDER'S duty as Commander - in Chief of the Navy to use all his strength to fight sucessfully against England. RAEDER knew the limitations of the fighting ability of the Navy, and it was therefore quite out of the question that he should have collaborated in an extension of the war, considering as he did the conduct of a war against England as a too difficult task. The GB 122 document C 152 submitted by the Prosecution mentions a proposition that Japan should attack Singapore and that the U.S.A. should be kept out of the war. This suggestion made to HITLER that JAPAN must attack Singapore was in all points correct

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We were now in a war against England, and RAEDER was forced to try to concentrate all his forces against England. He was thus justified in suggesting that Japan - as Germany's ally - should attack England. Moreover this one discussion of RAEDER was held on 18 March 1941, whilst HITLER in his Instructions No 24 of 5 March 1941 had established the directive that Japan must attack Singapore which he considered a key position of England*).

According to the confirmation of SCHULTE-MOENTING, RAEDER was just as surprised as any other German by Japans' attack on Pearl Harbour. The Prosecution failed in its attempt to shake SCHULTE-MOENTING's statement during his cross-examination by producing a telegram of the military attaché in TOKIO sent to Berlin on 6 December 1941. Not only had RAEDER probably received this telegram after the attack had started, but in this telegram PEARL HARBOUR is not mentioned at all.

That the charge of the Prosecution dealing with Brazil is refuted is proved by the fact that the Prosecution did not take up this point in any of the cross-examinations of RAEDER, SCHULTE-MOENTING and WAGNER. It deals with the charge that according to JODL's diary, already 2 months before the outbreak of the German-Brazilian war, the Naval command had demanded the delivery of the arms needed against the Brazilian Warships and Merchantmen, which was agreed to.***)

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*) see C 175 - US 151,

**) see D 872 - GB 480,

***) see 1807 PS- GB 227.

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Apart from this testimony this case is refuted by documents, namely the complete excerpt *) of JODL's diary, which I submitted as RAEDER Exhibit No. 115 as well as by further submitted documents, RAEDER Exhibit Nos. 116 - 118 **). These documents prove that Brazil had violated the rules of neutrality by permitting the USA to make use of Brazilian airdromes as a base for attacks on German and Italian U-Boats. The Brazilian Air Ministry has furthermore officially announced that attacks had been made by the Brazilian airforce. Considering such conduct against all rules of neutrality, the demand of the Naval command for armed action against Brazilian Vessels is justified. In this case also the Prosectuion did not succeed in proving RAEDER to have committed a crime or even an offense against International Law.

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* Doc. Book VI, page 500

**) Doc. Book VI page 503-513.

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IX.

The Prosecution has very carefully submitted an exceedingly large amour of material, and the many details implied necessarily great exactitude in the taking of evidence. I have endeavoured to deal with all remonstrances regarding the evidence or in my pleading, and have endeavoured to demonstrate that all the remonstrances, partly on factual, partly on legal grounds, do not represent the facts of a criminal case within the meaning of this Charter. In as far as I have not, in spite of my striving for great exactitude, dealt with certain documents, it was because they seemed to me of small importance, and in any case of no importance in criminal law, for instance the many cases in which RAEDER was only mentioned because - without officially taking any part - he received a copy of the documents for routine reasons. It would have been tiring to go into such recurrent cases, even if the Prosecut unremittingly reiterated these formal indication, so that one was often inclined to remember the saying of Napoleon that repetition is t turn of speech which is the most . . . of evidence.

I further believe that in the final pleading for Grand Admiral RAEDER I may leave aside an argumentation regarding the real war crimes or crimes against humanity, as I cannot establish any connection between these and RAEDER from the material submitted by the Prosecution. Further no particular reproach is made against RAEDER in this connectic with the exception of the two cases connected with the commando order, namely the shooting of two soldiers ...

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in Bordeaux and the shooting of the British soldier EVANS, who was made a prisoner by the SS on the Swedish border, after he had previously participated in the small weapons attack on the "Tirpitz". Thus far the reproach has been refuted by testimony in so far as it concerns the Navy. Both cases did not come, or came only later, to the knowledge of the Naval Command - just before RAEDER's departure -. In both cases the act was committed on the basis of the commando order of HITLER himself or by the Security Service (SD) without the knowledge and will of the Naval Command; and - what is the most important - in both cases the documents of the Prosecution showed that these soldiers were in civilian clothes, and therefore were not entitled to the protection of the Geneva Convention.*)

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*) See document D 864 = GB 457 concerning EVANS.

Document UK - GB 164, page 4 of original under figure 2 concerning EVANS, where in the English translation the words "in civilian clothes" were inadvertently missing, and UK 57, page 5 of original concerning the Bordeaux case, where the express reference to civilian clothing does also exist, and

see further my re-cross examination concerning Admiral WAGNER on 14 May 1946, forenoon, German transcript, pages 9464/68, also my re-cross examination of Admiral SCHULTE-MOENTING on 23 May, afternoon, page 10 050.

All other criminal facts which the Prosecution submitted especially for the East I need not deal with, as RAEDER did not participate in them. I hope also to have the approval of the Court in mentioning the handling of the Katyn case, in which the Court pointed out that RAEDER was not involved, and therefore refused my collaboration as Counsel in this connection; from this intend to draw the legal conclusion that, even in this round about way

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by the conspiracy, RAEDER cannot be considered as burdened with these criminal facts, since he did not know of these events and had nothing to do with said events.

The evidence of the Prosecution rests on the wish to have its theoretical basic assumption prevail and be acknowledged, namely the idea that so many crimes cannot have been the conception of a single person, but rather that they result from the conspiracy of many, that they must have originated in a plot. These conspirators could logically in the first place have been only HITLER's own collaborators, that is to say the real National Socialists. As, however, HITLER wished to realize, and did realize, results of military and economic importance, something peculiar occurred: There were no specialists among the National Socialists for these particular tasks. Most of the National Socialist collaborators did not previously follow a trade requiring technical education. HITLER therefore, despite his desire to have only National Socialists around him took on as key people in particular fields persons who were not National Socialists, such as for instance SCHACHT for economics, NEURATH for politics and, for military tasks, FRITSCH for the Army and RAEDER for the Navy. The Prosecution followed him in the interests of its conspiracy theory, without paying attention to the fact that these were no National Socialists, and therefore in the last analysis could not really be counted among the conspirators, and without taking into account that HITLER used these non-National Socialists only as technicians in a well-defined field, and this moreover only as long it seemed absolutely necessary to him and therefore he agreed to the elimination of these men, which at bottom were not in sympathy with him,

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as soon as the differences between them seemed unbridgable, which was bound to happen sooner or later with each of them in his vivn particular field.

By this wide conception of the idea of conspiracy and by this extension of the Prosecution's fight against non-National-Socialists, the Prosecution has abandoned the basic concept which was formerly propagated abroad, namely that of the fight against National-Socialism , but not against the whole of Germany, two ideas which at no time and in no place have been really identical, as the Prosecution now tries to make out. I do believe that thereby the Prosecution also abandons President ROOSEVELT'S basic idea.

But another factual and legal point of view has not been taken into consideration by the Prosecution.I mean the concept of <u>division of competence</u> in political law, that is to say the subdivision into individual competencies. This division of competence - resting on the idea of division of labour - has, in accordance with its essence, a separative character; it divides the field of work from the angle of local, functional and technic points of view. For one thing it positively defines the limits within which any single division is to become active; at the same time it defines <u>negatively</u> the boundaries of this activity by specifying which are the thing <u>which no longer concern</u> the agencies in question, that is to say where they must not develop any official activity.

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In a democracy, an additional contact exists by virtue of the general Cabinet meetings and/or through the Prime Minister, the Reich President or the Reich Chancellor. But it is different in a dictatorship, particularly if the dictator - as it was the case with Hitler in the National Socialist State - uses the separation between the individual governmental departments with extreme skill and sees to it that the individual departments are as isolated as possible, with the result that all decision rests finally with him as the dictator, in which case he even plays out one department against the other.

The partitioning into governmental departments carried out in the National Socialist State, contradicts the concept of conspiracy especially distinctly, making it difficult for the individual to go above his own department in any manner,

This significance may be described by the following example: The formulation of political relations with other States, the contracting or rescission of agreements or alliances with other States, declaring war and concluding peace are matters within the jurisdiction of the authority directing foreign affairs, but they are not within the jurisdiction of the authorities concerned with domestic tasks, such as for instance the Reich Finance Administration, Justice and the Military.

The result is: Since the decision concerning war and peace is not a matter of the military, the military has to accept the decisions made by the political leadership, decisions, which have a binding obligation for the military authorities.

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The military commander must assume for his department the consequences resulting from the decision. As soon as war is declared, the military forces must fight. They do not bear any responsibility for the war because they were not able to take part in the decision concerning the declaration of war.

Consequently for an army the concept of war of aggression exists in the strategic sense only. Morever, every war the waging of which is charged to it, is simply war regardless whether it may legally be justified or not.*)

Responsibility from the point of view of constitutional law and criminal law corresponds to the field of jurisdiction. Therefore, if the Commander-in-Chief of a branch of the Wehrmacht assumes responsibility solely for the waging of war, not for the causes leading to war, his responsibility in respect to strategic planning must be confined to planning as such, but not to the possible causes which brought about that war on which the strategic planning is based.

This constitutionally and criminally important division of governmental departments and the distribution of authority was carried out by HITLER in a particularly emphatic manner in the interest of strengthening his own power in many domains, such as for instance, the creation of "The Commissioner for the Four-Year Plan" whose field of work actually belongs to the Ministry for Economics; the creation of Reich Commissioner in the occupied territories, whose activity really comes under military administration,

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*) Refer also to Article 45 of the Reich Constitution.

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and, finally, a fact of interest in the case Raeder, the strict limitation between the three branches of the Wehrmact and the elimination of the Reichswehr Minister of the and/or Minister of War who held the three branches of armed services together and unified them. The greater the number of the governmental departments became, and the more the departments were cut off from one another, the stronger Hitler became as a dictator, as the only one with authority over all the innumerable agencies. But with this the constitutional as well as the criminal responsibility of the chief of the individual department decreased and with it also the responsibility for strategic planning in one individual department, in this instance the Navy.

Consequently, the Commander-in-Chief of a branch of the Wehrmacht, thus for instance the Navy, can in case of strategic planning only be responsible for the planning of naval strategy; he did not have an overall view of the total planning. Total planning was discussed nowhere; politically and militarily it was in Hitler's hands exclusively because he alone was the center where all threads and all activities of the individual departments joined.

In addition, no purely strategic planning as such can be criminal because it is customary in every country and because in every country the military commander of a branch of the armed forces does not and can not know for what purpose the political leadership will use the plan prepared by him, whether it is a war of aggression or a defensive war.

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The documents submitted in my document book prove convincingly that the military agencies, both of the Allies as well as in Germany, worked out stratigical plans in the same way and in the same areas and at the same times, namely in regard to Norway, Belgium *), Holland, Greece, Rumania, and moreover the Allied plans for the destruction of the Rumanian oil fields and especielly of the oil sources in the Caucasus, **) Especielly the plans concerning the Caucasus on the part of the Supreme Council, i.e. of the combined British and French General Staff, show the correctness of the statements. The Supreme Council would certainly decline to be made politically responsible for these strategical plans, although the Soviet Union was still neutral at the time thereof, and the execution of the plans were to strike not only the enemy country Germany, but also the neutral Soviet Union, as the documents also show.

The similarity of the documents concerning such plans is absolutely convincing and shows a strong parallel trend. May I point in this connection to my earlier statements made here on the occasion of the comprehensive discussion ***) regarding the importance and admissibility of the documents submitted by me; may I also point in addition

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*) see RAEDER Exhibit Nos. 33 and 34, volume II, page 178 et seq.

**) see RIBBENTROP Exhibit No. 221,
see RAEDER Exhibit No. 79, volume IV, page 359 et seq.
see RAEDER Exhibit No. 41, volume III, page 2)4, furthermore German transcript of 1 May 1946, afternoon, page 8640, and same transcript of 16 May afternoon, pages 9691/92.

***) same transcript of 1 May, afternoon, pages 8670/1, and of 16 May, afternoon, pages 9687/88.

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document RAEDER Exhibit No. 130, namely the letter of the Foreign Office in which submission of the British Admirality files is refused, but in which the plans in regard to Norway and the whole of Scandinavia are admitted, but with the addition that the planning was not transformed into action, a fact which depended only on Germany's having started the execution of the planning first.

One may be a pacifist and therefore basically opposed to military force, but then one must be consistent and must take a stand not only against German military force, but against any military force. One may condemn the fact that the military, as the operational authorities, prepare military plans, and may in future insist that such plannings are punishable. But then not only German military planning, but also foreign military planning must be punishable.

The above statements show that the Prosecution misjudges the actual and legal conditions, if it wishes to make RAEDER responsible for politic decisions, although he had nothing to do with them, but has always worked as soldier only. Just as little as it could be suggested 130 years ago to bring before a Court an Admiral of the dictator NAPOLEON, so just as little can one now condemn an Admiral of the dictator HITLER. Particularly with dictators - and the Prosecution overlooks this - not only the power and the influence of a military commander diminishes but his responsibility must also diminish to the same extent;

for the dictator has seized all power and with it all responsibility. All the more so, if a dictator appears with such an extraordinary will such immense power, as Hitler. The French Prosecutor said in a particularly pertinent way on 7 February 1946 before this Tribunal *) word for word:

"Hitler was actually the <u>incarnation of all willpower</u>".

The resulting strength and power has been hardly considered by the Prosecution, and, in any case, it has not been taken into consideration at the presentation of the facts and the legal conclusions. How great this power is, GUSTAVE LE BON shows in his famous book "Psychology of the Masses" **) in the chapter "The Leader of the Masses". I quote from it:

"Within the class of leaders a somewhat strict division can be made. The energetic people with strong wills, but without perseverance belong to the one kind; the people with a strong, persevering will belong to the other kind, which is much rarer .....

The second class of leaders, those with a persevering will, exercises a much more important influence, in spite of its less brill appearance."

Hitler belongs to this second class of leaders, who, in agreement with this quotation, exercised an immense influence, and who, on the other hand, was unimpressive in his brown uniform.

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*) German "transcript", page 4023,

**) ALFRED KROENER Publishers, pages 101 and 102.

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Gustave le BON continues:

" The unyielding will, which they possess is an exceedingly rare and powerful attribute which subordinates everything to it. One does not always realize what a strong and persistent will can achieve. Nothing can resist it, neither nature nor Gods nor men."

In view of these words, one must realize that RAEDER could not resist also.

Accordingly, only the question remains: can revolt ever be a soldier's duty, an open revolt ? This question will be denied by every commander all over the world and likewise by any other men with one exception only, if it is the case of a Dictator committing a crime the criminality of which is recognized by the military commander himself. Accordingly, RAEDER could be made responsible for a military crime only, but not for a politic one, because for the political crime, the Dictator himself must answer. Should the Prosecution have come to same other conclusion regarding RAEDER, it has only occurred - as I have already emphasised in my introduction - because, in their misconception of the actual and juridical facts, they regarded RAEDER as politician and soldier. But he was a soldier only. He lived for the Navy alone, for the welfare of the Navy for which he also is now prepared to bear all responsibility to the full extent. He has led the Navy in a unified manner, and, aided by his Officer-corps, has taught them to think decently and to fight morally, to fight up to humanity's expectations of a soldier.

It must not be that, as a result of the deeds of a HITLER and his National Socialism, the officers and soldiers of this Navy be defamed by their highest ranking officer being declared a criminal. From a histor. viewpoint RAEDER may be guilty, because he, as many others within the country and abroad, did not know or see through HITLER, and did not hav the strength to resist the dynamic strength of a HITLER ! but an omission is no crime. What RAEDER did or left undone in his life was in the belief that he was acting correctly and, that as a conscientious soldier, he had to act in this way. RAEDER is highly regarded as an officer who is not a criminal and cannot be a criminal since all his life he has lived honorably and as a Christian /. A man who believe: in God does not commit crimes, and a soldier who believes in God is no: a war criminal.

I therefore beg the Tribunal to acquit completely Grand Admiral Dr. h.c. Erich RAEDER / regarding to all points of the indictments.

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